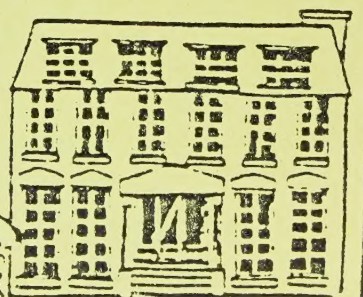
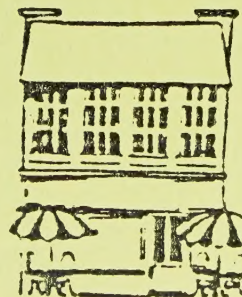
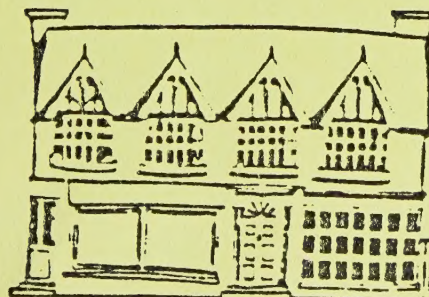


BECA-0153

THE
RENT STABILIZATION PROGRAM
A Supplemental Report

CITY OF BERKELEY
MARCH 1984



City of Berkeley



CITY MANAGER'S OFFICE
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M E M O R A N D U M

March 27, 1984

To: Honorable Mayor and
Members of the City Council

From: Daniel Boggan, Jr., City Manager

Subject: THE RENT STABILIZATION PROGRAM; A SUPPLEMENTAL REPORT

The purpose of this report is to provide the City Council with an overview of the legal framework and programmatic history of Rent Stabilization in Berkeley in order to provide the City Council with more information about the Rent Stabilization Program.

Copies of Measure I (Renters Property Tax Relief Ordinance), Ordinance No. 5212-N.S. (Adopting a Temporary Rent Stabilization Program) and Measure G (Rent Stabilization and Eviction for Good Cause and Tenants Rights Amendment Act of 1982) are attached to this report for your information. In addition, there is a matrix to outline the major differences in these ordinances.

The report is divided into three sections:

- I. A Legal Overview of Rent Control in Berkeley and present Litigation
- II. A statistical review of the Program Operation since July 1980
- III. Issues for Council discussion
 - A. Oakland/Berkeley Shared Boundaries

The application of the Rent Stabilization Ordinance in certain situations when the property straddles the border has caused considerable staff time in order to determine proper implementation of the ordinance. There are a number of issues which must be determined in applying the ordinance to these properties.

- B. Rent Stabilization Board Sale Certification

Rent Stabilization Board and staff recommend that an ordinance be enacted to require that registration statistics and legal rent levels be incorporated into the escrow for residential rental properties sold in Berkeley.

March 27, 1984
Page 2.

Subject: THE RENT STABILIZATION PROGRAM; A SUPPLEMENTAL REPORT

C. Conflict of Interest Appendix C

Rent Stabilization Program staff has determined that Appendix C of the Rent Stabilization Program Conflict of Interest Code was not resubmitted to the City Council in September 1981. Appendix C refers to Board members and employees disqualification from certain participation and the manner of disqualification.

The majority of material contained in this report is for informational purposes only.

It is anticipated that the issues presented for Council discussion will be placed on a Council agenda for action at a later date.

Attachments

I. A Legal Overview

A portion of the information contained in this section of the report was previously presented in the December 1983 Report to Council.

June 1972, Birkenfeld vs City of Berkeley

The history of modern rent control legislation in Berkeley spans more than a decade. In June 1972, the voters passed a charter amendment which established a comprehensive system of rent control and provided for an elected rent board. The amendment was found invalid by the California Supreme Court in 1976 in Birkenfeld v. City of Berkeley, 17 Cal. 3d 129, because it did not provide for a general adjustment mechanism to enable landlords to readily recoup increased costs attributable to most properties. The Court also held that it imposed certain procedural barriers to the unlawful detainer process which were not permitted under State law. Although the Court struck down the Berkeley law, it clearly held that rent control was properly a matter for local regulation. The court's decision also established some of the parameters necessary for such legislation to withstand judicial review.

April 1977 - Charter Amendment B

In the April 19, 1977 election, a ballot measure, Charter Amendment B, failed. This initiative measure would have enacted rent control in the City of Berkeley and would have also provided for an elected rent control board to administer the ordinance and regulations issued by the Board. Specifically, this would have frozen rents for at least 90 days, rolled rents back to the rent charged on June 16, 1976 and empowered the Board to establish or approve general rent levels for rental units upon petition of landlords or tenants. Registration requirements were also included as well as certain eviction controls.

Measure I (Renters' Property Tax Relief Ordinance) - Ballot Measure adopted November 7, 1978

Some two years after the Birkenfeld decision, Berkeley voters passed Measure I in November 1978. Rents for most Berkeley properties, commercial and residential, were affected. Exemptions were provided for property which was not taxed, nonprofit cooperatives, transient hotels, hospitals and owner-occupied properties containing four units or less.

Certain calculations were necessary to determine the lawful rent for a given unit under Measure I. The ordinance required that rents be rolled back to the June 6, 1978 level until the end of that year. For 1979, the maximum allowable rent for a covered unit was the June 6, 1978 rent reduced by an amount equivalent to 80% of the landlord's share of the property tax reduction resulting from Proposition 13. The rent reduction was to be apportioned amongst the units in the building and divided by the number of rental payments for the year.

I. A Legal Overview - Continued

Rents could be freely increased under Measure I so long as:

1. The rent increase was necessary as a result of increased costs including properly amortized capital improvements;
2. The landlord had already spent an amount of money equal to 20% of the Proposition 13 savings on such increased costs;
3. The increase was properly noticed and a detailed financial statement justifying the rent increase was provided to the tenant.

Measure I was designed to be self-enforcing. Tenants were given the right to sue noncomplying landlords for damages and to seek injunctive relief.

Ordinance No. 5212-N.S. (Temporary Rent Stabilization Program) - Passed by Berkeley City Council November 27, 1979

By its terms, most of the provisions of Measure I expired at the end of 1979. In late November of that year, the City Council passed Ordinance No. 5212-N.S. which established a temporary rent stabilization program. This ordinance closely resembled Measure I. However, it covered only residential units and provided no exemption for properties which were exempted from property tax. The other exemptions were virtually the same as those contained in Measure I.

Ordinance No. 5212-N.S. regulated rents from January 1980 until the voters passed a permanent rent stabilization ordinance in June 1980. The lawful rent on December 30, 1979 was selected as the starting point for all adjustments. Rents could be increased so long as the increase was cost justified and the total increases imposed during the life of the ordinance did not exceed 5%. The requirements for proper documentation of a permissible increase and the tenant remedies were very similar to those contained in Measure I.

Measure D (Rent Stabilization and Eviction for Good Cause Ordinance) - A Ballot Measure passed by Berkeley Voters on June 3, 1980

On June 3, 1980, the present Rent Stabilization and Eviction for Good Cause Ordinance was enacted by the voters. It provides for comprehensive regulation of rents including registration of units, general and individual adjustments of rent ceilings, enforcement powers and tenant remedies. Evictions are limited to good causes such as nonpayment of rent and breaches of the rental agreement which the tenant has failed to cure after written notice. The Rent Stabilization Board administers the provisions of the ordinance.

Measure G (Tenants Rights Amendment Act of 1982)

This ballot measure adopted June 8, 1982 amended the ordinance passed on June 3, 1980.

I. A Legal Overview - Continued

In June 1982, the voters added additional provisions to the Rent Stabilization and Eviction for Good Cause Ordinance with the adoption of the Tenants Rights Amendment Act of 1982. This ballot measure reduced the owner-occupied exemption from four units to properties containing two units or less. It required the annual payment of interest on security deposits, increased the penalties for late payment of the registration fee, required the Board to mail tenants copies of rent registration statements, provided for permanent loss of the annual general adjustments under certain circumstances and strengthened the eviction controls. The amendments also established the requirement for a two-thirds vote of the Board for any annual general adjustment of rent ceilings which exceeds 45% of the increase in the Consumer Price Index.

Measure N - a Ballot Measure also passed by Berkeley Voters on June 8, 1982

In June 1982, the voters passed Measure N. This charter amendment provides for the direct election of the Rent Board members. It defines landlords as members of the regulated class and limits the matters in which they can participate in decision-making. The Board becomes a quasi-independent agency with the power to hire and fire staff. Certain funding restrictions are also removed. The Board is empowered to administer both the current ordinance and any other rent control ordinance which is enacted in the future. The first election for Rent Stabilization Board members will take place in June 1984.

Present Litigation - Fisher v. City of Berkeley

The major litigation before the Rent Stabilization Board at present is the pending Supreme Court decision in Fisher v. City of Berkeley.

This report will provide you with a summary of the Court of Appeal action and its rationale, and the City of Berkeley's petition to the Supreme Court.

Court of Appeal Action and Rationale

In October 1983, the Court of Appeal held that certain provisions of the Rent Stabilization and Eviction for Good Cause Ordinance suffered from constitutional infirmities or were preempted by state law. The sections in question dealt with the annual general adjustment mechanism and the right of tenants to withhold payment of rent when the landlord is in violation of the ordinance.

The Court struck down the annual general adjustment mechanism because they believed that it does not contain an express provision permitting the Board to consider landlords' return on investment in deciding whether or not there should be a general rent increase. Significantly, the issue on which the Court decided this part of the case was never briefed by the parties and was only touched upon indirectly in oral argument. Thus the Court did not have the benefit of a presentation by both parties before it rendered its decision.

I. A Legal Overview - Continued

The Court of Appeal also held that the provisions of the ordinance permitting tenants to withhold rent if the landlord is in violation of the law were preempted by various provisions of state law. Although the ordinance contains a severability clause, the Court held that the alleged defects in the annual general adjustment mechanism could not be cured. It therefore struck down the entire ordinance.

City Response: Supreme Court

Pursuant to Council authorization, the City filed a petition for hearing with the California Supreme Court. The petition was accepted, thus effectively vacating the Court of Appeal decision. Other cities, individuals and groups filed amicus briefs in support of the City's position. Some landlord organizations have filed in support of the landlord plaintiffs.

The Supreme Court had set a date in March 1984 for the matter to be argued. However, the Court set aside this date on its own motion. It asked the parties to address certain questions concerning the antitrust implications, if any, of the Rent Stabilization and Eviction for Good Cause Ordinance. A brief filed by the California Apartment Association had raised this issue for the first time on appeal and the Court wished to give all concerned a chance to address it.

The Court has offices in cities other than San Francisco and is currently holding hearings in other parts of the state. It is thus now anticipated that oral argument will now take place sometime in June after the Court returns to San Francisco. Normally, decisions are rendered within approximately three months following oral argument, which means that final decision is anticipated by September.

The City believes that there is a strong likelihood that it will prevail in the Supreme Court.

Law	Initiative - I Renter Property Tax Relief Ordinance of 1978	Ordinance 5212 Temporary Rent Stabilization Program	Measure D Rent Stabilization and Eviction for Good Cause Ordinance	Measure G Tenants Rights Amendment Act of 1982
Enacted by	Voters in November 7, 1978 (58%)	City Council on November 27, 1979	Voters in June 3, 1980	Voters on June 8, 1982
Period in effect	November 1978 - December 1979	December 1979 - June 1980	June 1980 no expiration date but if vacancy rate exceeds 5% over a 6 month period, Board may request City Council to exempt more units.	June 1982
Units not covered	Hotels, boarding houses co-op, health care owner occupied property of 4 units or less.	Government owned, hotels, co-op, housing authority, health care owner occupied property of four unit or less.	Government owned, housing author- ity, hotels, co-op, health care owner occupied property of 4 units or less if owner lived at unit on 12-31-79, units where owner shares bathroom, kitchen, or both with tenant, new construction.	Same as Measure D
Rent Regulation	Rent level on June 6, 1978 for November and December 1978. In 1979, rent is reduced by an apportionment of the decrease in the owners property taxes with 80% of the tax decrease pas- sed to renter in the form of reduced rent.	Rent level on December 20, 1979	Rent level on May 31, 1980	Rent level on May 31, 1980
Allowed Increase	If costs exceed 20% of the property tax de- crease costs include sale, refinancing, taxes, fees, insurance, main- tenance and operating expenses, utilities, & certain rehabilitation and improvements.	Up to 5% if increase represents costs paid by owner during Jan- June 1980. Costs in- clude taxes, fees, insurance, maintenance and operating expenses, utilities certain re- habilitation.	Annual General Adjustment. For 1981 an increase of 5% or 6.2% if heating included with rent payment is permitted if rental unit is registered and 30 days notice is served.	Annual General Adjustment cannot exceed 45% of the CPI unless there are 6 votes of the Board. Unit unregistered entire year loses Annual General Adjustment for that year. Loss of 10% of Annual General Adjustment for each month property remains unregistered after December
Procedure for income above allowed amount	30 day written notice with financial state- ment which explains and documents in- creased costs.	Same as I	Petition for hearing with Board, Filing fee right to appeal 30 days after decision. Procedure should be completed within 4 month period.	Same as Measure D
Registration	None	None	Required for all covered units- form asks for rent levels on June 6, 1978 and December 30, 1979. Annual registration fee of \$12 per unit due September 1. \$12 penalty for late registra- tion + 1% per month in 1981.	All units on a parcel must be re- gistered for a property to be con- sidered registered. Fee increased to \$30-penalty assessed 100% every 60 days that fees remain unpaid after September 1 deadline.
Renter Remedies if owner does not com- ply with Rent Re- gulation Law	Withhold $\frac{1}{2}$ rent; injunctive relief; file suit	Withhold full rent; injunctive relief, suit for damages - bad faith \$750.	Petition Board for permission to withhold and possibly keep part or all of rent, withhold full rent. Injunctive relief; suit for damages bad faith-\$750 recover possession and damages if owner did not move in or start demolition within 2 months after tenant move out and this was "good cause" reason	Same As Measure D
No Retaliation Period	3 months	6 months	6 months	6 months



II. A Statistical Overview of the Rent Stabilization Program

This section of the report will provide an updated statistical overview of the Rent Stabilization Program operation. Included herein are the following reports:

- The Second Quarterly Report to Council on the Rent Stabilization Program.
- A Registration Status Update as of February 29, 1984.
- A matrix of the number of units covered under the Rent Stabilization Program by building size.
- A Budget/Revenue and Expenditure Overview of the Rent Stabilization Program from July 1980 to the present.
- An overview of the staffing models for the Rent Stabilization Program from July 1980 to the present.

(Revised figures for 9/30/83)	1st QUARTER SEPTEMBER 30	2nd QUARTER DECEMBER 31	3rd QUARTER MARCH 31	4th QUARTER JUNE 30	CUMULATIVE YEAR TO DATE
A. Revenue	as of 7/1	as of 10/1/84			
Amount billed at beginning of Quarter	1,260,036.67	906,346.33			N/A
Amount Delinquent as of end of Quarter	650,811.35	1,118,491.85*			N/A
Number of units registered during each Qtr including exemptions	20,538	2,032			22,570
Registration fees received	640,040.89	49,207.36			689,248.25
Miscellaneous fees received	8,285.60	845.00			9,130.60
Carryover from prior years	132,566.02	0			132,566.02
Total Year to Date					830,944.87
*\$ 116,981 83-84 registration fees					
52,754 82-83 registration fees					
948,756 penalties & prior year fees					
\$1,118,491.85					
100% penalty assessment is applied every 60 days.					
B. Hearings					
Landlord petitions	11	15			26
Tenant petitions	33	35			68
Rent withholding petitions	18	0			18
Total petitions filed	62	50			112
Petition Hearings Conducted					
Landlord initiated hearings	8	12			20
Tenant initiated hearings (Repairs/Housing Services)	29	42			71
Tenant rent withholding hearings	17	8			25
Consolidated hearings	0	0			0
Total hearings conducted	54	62			116
C. Appeals					
Petitions filed	39	14			53
Decisions rendered	27	26			53
D. Evictions					
Eviction notices received	125	196			321
Notices in compliance	102	156			258
Notices not in compliance	23	40			63

A STATISTICAL OVERVIEW OF THE RENT STABILIZATION PROGRAM

Registration Status Update

Number of units registered as of February 29, 1984, including exemptions - 23,666

Revenue as of February 29, 1984

Registration Fees/Penalties	-	\$717,611.18
Miscellaneous	-	14,032.35
Carryover	-	<u>132,566.02</u>
Total		\$864,209.55

Accounts Receivable as of
February 29, 1984

83-84 Fees	\$65,263.02
82-83 Fees	\$47,452.88

Prior year Fees & Penalties all years	\$862,336.45
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Total	\$975,052.35
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ESTIMATED NUMBER OF UNITS BILLED UNDER THE
RENT STABILIZATION PROGRAM BY
BUILDING SIZE

1 to 4 Units	- 9,107
5 to 10 Units	- 6,292
11 to 20 Units	- 4,154
Over 20 Units	- 5,699

Total Units Billed	
July 1983	25,252

THE RENT STABILIZATION PROGRAM BUDGET OVERVIEW

		<u>Budget</u>		<u>Revenue Received</u>	<u>Expenditures</u>
1980-81	Program		Total \$354,000	\$321,836	\$321,836
1981-82	Program				
	Finance				
	Legal		Total \$450,600	\$368,222	\$353,577
1982-83	Program	556,253			
	Finance	44,747			
	Legal	75,000	Total \$820,000	\$684,949	\$553,285
1983-84	Program	797,660			
	Finance	37,579			
	Legal	135,762	Total \$971,000	\$864,209.55*	\$447,455.87
				(To date)	(As of 2/29/84)
1984-85	Program	840,249			
(Tentative)	Codes	41,386			
	Legal	184,000	Total \$1,065,635		

* Includes \$132,566.02 prior year carryover

RENT STABILIZATION PROGRAM

STAFFING MODEL

FOR EACH PROGRAM YEAR

1980 - 81	Deputy City Attorney	1.0
	Associate Adm. Analyst	1.0
	Community Service Specialist	1.0
	Senior Account Clerk	1.0
	Intermediate Account Clerk	1.0
	Intermediate Typist Clerk	3.0
	Intermediate Steno.	1.0
	Senior Hearing Examiner	<u>1.0</u>
		9.0
1981 - 82	Deputy City Attorney	1.0
	Associate City Attorney	1.0
	Assistant City Attorney	1.0
	Community Service Specialist	1.0
	Adm. Secretary	1.0
	Legal Steno.	.5
	Intermediate Steno.	1.0
	Intermediate Typist Clerk	1.0
	Senior Hearing Examiner	<u>1.0</u>
		8.5
1982 - 83	Program Chief	1.0
	Associate Adm. Analyst	2.0
	Adm. Secretary	1.0
	Senior Hearing Examiner	1.0
	Community Services Specialist	1.0
	Senior Clerk	2.0
	Intermediate Typist Clerk	<u>3.5</u>
		11.5
1983 - 84	Chief	1.0
	Senior Hearing Examiner	1.0
	Associate Adm. Analyst	3.0
	Assist. Adm. Analyst	3.0
	Adm. Secretary	1.0
	Intermediate Account Clerk	2.0
	Intermediate Typist Clerk	4.0
	Account Clerk	.5
	Part-Time Hearing Examiner	<u>1.5</u>
		17.0
1984 - 85	Tentative	
	Chief	1.0
	Senior Hearing Examiner	1.0
	Hearing Examiner	1.5
	Associate Adm. Analyst	3.0
	Asst. Adm. Analyst	2.0
	Senior Clerk	2.0
	Senior Account Clerk	1.0
	Intermediate Account Clerk	1.0
	Intermediate Typist Clerk	4.0
	Account Clerk	<u>.5</u>
		17.0

III. Issues for Council Discussion

This section of the report describes several issues being directed to the City Council's attention for the purpose of discussion and Council action at a later date.

Shared Boundaries

For some time Rent Stabilization Program staff has struggled with the application of the ordinance for those properties which straddle the Berkeley/Oakland border.

There are a number of instances where the boundary lines cross a single family dwelling, a fourplex or two properties on one parcel. In administering the registration and eviction provisions of the ordinance it has come to staff's attention that boundaries cross single family dwellings, separate units within a multiple complex and that properties which have Berkeley addresses may be physically located in Oakland and vice versa. Given the language in the ordinance staff is recommending a policy which states that the portion of the property in Berkeley is covered under the Ordinance. The City Attorney's office and the Zoning Section have recommended that the boundaries be adjusted so that a property would either be located in Berkeley or Oakland. Such an adjustment can only be accomplished by negotiations with the City of Oakland.

Program staff has researched the application of other ordinances and the tax assessment for the properties, etc., which fit in this category and that information is attached for your information. We determine that services are provided based on the street address and taxes are apportioned.

The application of the Rent Stabilization Ordinance to a multiple unit property where two units are in Berkeley and two units are in Oakland is difficult to explain to the property owner. Furthermore, in some cases while the property straddles the line, more than 50% of the property is located in Oakland and in some cases even though the property is physically located in Oakland, a Berkeley address is used for various reasons, usually access for postal service and garbage pickup. This situation has been a very difficult one for the program staff to administer. Both the Board and staff recommend that consideration be given to the adjustment of the shared boundary lines so that the boundaries do not run through a parcel.

Rent Stabilization Board Sale Certification

Over the past two years there have been a considerable number of problems regarding the sale of unregistered residential rental properties here in Berkeley. A number of cases have passed through the Administrative Hearings Unit in which the landlord of a newly acquired property discovers that the information relative to rent levels provided at the close of escrow was not accurate and in some cases the property has never been registered in accordance with the Rent Stabilization Ordinance. While it is true that the new owner has recourse through the civil court with regard to misrepresentation, the Board and staff concur that we should provide some mechanism to build in some safeguards for new owners.

III. Issues for Council Discussion - Continued

It is recommended that the Council consider an ordinance such as the RECO Ordinance requiring buyers or sellers to sign a certificate that they have been advised of the Rent Stabilization and Eviction for Good Cause Ordinance and have checked with the Rent Stabilization Program office regarding the legal rent levels and the registration status of the property. This certificate would be signed and submitted to the Rent Stabilization Program office before the close of escrow.

Conflict of Interest

In the course of reviewing our files, staff has determined that Appendix C of the Rent Stabilization Program's Conflict of Interest Code was never resubmitted to the City Council for review and adoption. Appendix C refers to Board Members and employees disqualification from certain participation and the manner of disqualification. Many of the issues addressed in Appendix C are extremely pertinent. For this reason, Board and staff recommend that the Council again review Appendix C and take the appropriate action. The entire code and the research report of the issue are included for your information. Further information will be presented upon your specific request.

PROPOSED INITIATIVE ORDINANCE

INITIATIVE MEASURE I

Shall the People of the City of Berkeley adopt an initiative measure entitled, "Renter Property Tax Relief Ordinance of 1978"?

Financial Implication: Little or no impact on City government

For the Ordinance

Against the Ordinance

RENTER PROPERTY TAX RELIEF ORDINANCE

Be it Ordained by the People of the City of Berkeley as follows:

Section 1: Title This ordinance shall be known as the Renter Property Tax Relief Ordinance of 1978.

Section 2: Purpose The passage of Proposition 13 on June 6, 1978 has provided some property tax relief to homeowners and owners of rental property without providing any tax relief to renters. The shortage of affordable rental property in the City of Berkeley, and rising rents resulting from this shortage, has produced a severe problem for a significant proportion of residential and commercial Berkeley renters, and has endangered the health, safety and welfare of all Berkeley residents. In view of this serious problem, it is necessary as well as fair that renters be provided with a portion of the benefits of the property tax relief resulting from Proposition 13. Therefore, the purpose of this Ordinance is to ensure that renters, who have shared the burdens of property taxes, will receive a fair share of the benefits of property tax reductions on rental property established by the passage of Proposition 13, enacting Article XIII A of the Constitution of the State of California.

Section 3: Definitions The following words or phrases as used in this Ordinance shall have the following meanings:

(a) **Rental Unit:** Any building, structure, or part thereof, or land appurtenant thereto, or any other real property rented or available for rent for any purpose located in the City of Berkeley, together with all services connected with the use or occupancy of such property.

(b) **Owner:** An owner, lessor, sublessor or any other person entitled to receive rent for the use or occupancy of any rental unit, or an agent or successor of any of the foregoing.

(c) **Renter:** A tenant, subtenant, lessee or sublessee of a rental unit, or any group of tenants, subtenants, lessees or sublessees of a rental unit.

(d) **Rental Agreement:** An agreement, verbal, written or implied, between an owner and a renter for the use or occupancy of any rental unit.

(e) **Property:** A parcel of real property which is assessed and taxed as an undivided whole.

(f) **Rent:** The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease for such units including but not limited to monies demanded or paid for parking, pets, furniture, and subleasing, or for the installation and use of equipment and fixtures.

Section 4: Applicability This Ordinance shall apply to all real property which is being rented or is available for rent in whole or in part except for the following:

(a) Such property which is exempt from property taxes.

(b) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(c) Units in non-profit cooperatives owned and controlled by a majority of the residents.

(d) Rental units in any hospital, extended medical care facility, asylum, or non-profit home for the aged.

(e) Residential property which is divided into a maximum of four (4) units where one of such units is occupied by the owner as her or his principal residence. However, for the purpose of applying the exemption in this subsection the term owner shall not include a sublessor or an agent of an owner.

Section 5: Partial Applicability to Subsidized Housing

(a) Any unit of subsidized housing exempted or preempted by Federal or State law or administrative regulation from the imposition of maximum rents by municipal ordinance shall not be subject to any maximum rents imposed by this Ordinance.

(b) Eighty percent (80%) of the property tax savings calculated pursuant to Section 8 of this Ordinance shall be passed on to renters of subsidized housing and apportioned among rental units in a property in a manner substantially consistent with Section 8 of this Ordinance unless such manner of apportionment among units is otherwise provided by Federal and or State law or administrative regulation or regulatory agreement with the governmental agency empowered to regulate such subsidized housing.

Section 6: Maximum Allowable Rent Until December 31, 1978 Every owner of rental property shall make the appropriate calculations as indicated in this Section for each property covered by this Ordinance.

(a) For the purposes of this Ordinance, the rent under the rental agreement in effect on June 6, 1978 for each rental unit covered by this Ordinance shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978, the last rent in effect for that unit in the preceding six months shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978 or in the preceding six months, the Base Rent shall be a good faith estimate of the average rent in effect for comparable units in the City of Berkeley on June 6, 1978.

(b) Commencing on the date on which rent is next due and payable following the date of adoption of this Ordinance and until December 31, 1978, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent as determined in subsection (a) of this Section.

Section 7: Notice of Maximum Allowable Rent Until December 31, 1978 Within fifteen days after the adoption of this Ordinance, but in no event later than the date on which rent is next due and payable after adoption of this Ordinance, the owner shall provide the renter of each rental unit covered by this Ordinance with a written notice of the rent in effect until December 31, 1978 as determined by Section 6 of this Ordinance.

Section 8: Determination of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979 Upon the issuance of property tax bills for 1978-79 reflecting the provisions of Article XIII A of the Constitution of the State of California, every owner of rental property shall make the appropriate calculations, as indicated in this Section, for each property and rental unit covered by this Ordinance.

(a) Total Base Rent

(i) For property which includes only rental units, the Total Base Rent shall be the sum of the Base Rents, as calculated pursuant to Section 6 of this Ordinance, for all rental units in that property.

(ii) For property used partly for rental purposes, a good faith estimate of the fair market rental value of the unrented portion of the property, including any owner-occupied portion, shall be made based on the average rent in effect on June 6, 1978 for comparable portions of property in the City of Berkeley. This estimate plus the sum of the Base Rents for all rental units in the property shall constitute the Total Base Rent.

(b) Property Tax Savings For the purposes of this Ordinance, Property Tax Savings shall constitute the total taxes due, including all installments, as listed on the 1977-78 property tax bill less the total property taxes due, including all installments, as listed on the 1978-79 property tax bill. A difference of less than zero shall be considered as zero.

(c) Property Tax Relief to be Allocated The Property Tax Relief to be Allocated among units in a property shall be eighty percent (80%) of the Property Tax Savings for that property.

1) Allocation of Property Tax Relief Among Units

(i) For property covered by this Ordinance, the Property Tax Relief as defined in subsection (c) of this Section shall be allocated among rental units and any unrented units in the property, including owner-occupied portions. Such allocation shall be made by determining the percentage of the Total Base Rent of a property that the Base Rent for each unit in that property constitutes, and multiplying this percentage by the Property Tax Relief to be Allocated for that property. For each rental unit in a property, the resulting dollar amount shall be the Renter Property Tax Relief to be apportioned over calendar year 1979.

(ii) In the case where Base Rents for different units in the same property are not directly comparable to each other, such as where rents for some but not all units are based on gross receipts, the necessary calculations shall be made so that the allocation of Renter Property Tax Relief is determined in an equitable manner consistent with the purposes of this Ordinance.

(c) Apportionment of Renter Property Tax Relief as Rent Reductions Over Calendar Year 1979 The Renter Property Tax Relief for each rental unit covered by this ordinance, as determined in subsection (d) of this Section shall be apportioned over calendar year 1979 by reducing the Base Rent of the rental unit by an amount equal to that unit's allocated Renter Property Tax Relief divided by the number of rent payments to be made in 1979 by the renter of the unit pursuant to the rental agreement. For example, if rent is paid on a monthly basis, one-twelfth (1/12) of the unit's allocated Renter Property Tax Relief shall be the monthly rent reduction over calendar year 1979. If a rental unit covered by this Ordinance is rented to a particular renter for only part of calendar year 1979, the Renter Property Tax Relief to be provided to that renter in 1979 shall be proportional to the percentage of time during 1979 the rental unit is rented to that renter.

(f) Rounding to Dollar Amount In order to simplify the calculations made under this Ordinance money amounts may be rounded to the nearest dollar.

(g) Maximum Allowable Rent for Calendar Year 1979 Commencing on January 1, 1979 and until December 31, 1979, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent, as determined in Section 6 of this Ordinance, reduced by the apportioned Renter Property Tax Relief allocated for that unit as determined in this Section.

Section 9: Notice of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979

(a) By December 15, 1978 or within fifteen days of the issuance of the property tax bills for fiscal year 1978-79, whichever is later, the renter of each rental unit covered by this Ordinance shall be provided by the owner with a written notice of the Renter Property Tax Relief for that rental unit and the rent in effect for that rental unit for calendar year in 1979 as calculated pursuant to Section 8 of this Ordinance. Such notice shall substantially follow the form set out in Appendix A of this Ordinance.

(b) When a rental unit covered by this Ordinance is rented to a new renter during calendar year 1979, the new renter shall be provided by the owner with a written notice of the allocated Renter Property Tax Relief for that unit and the rent in effect for that rental unit for calendar year 1979 as determined under Section 8 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable and shall substantially follow the form set out in Appendix A of this Ordinance.

(c) After the date on which notices required by this Section must be issued, the owner must provide, within seven days of the receipt of a written request by a renter of a rental unit in the owner's property, a written list of the amounts of Base Rents and Renter Property Tax Relief for all units in the property including unrented units. Whenever possible, this list shall not identify specific units.

(d) A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

Section 10: Renter Remedies

(a) If a notice required by this Ordinance has not been provided in good faith by the date required, a renter may notify the owner to issue such a notice within three days. If, after three days, the required notice has not been provided to the renter, the renter may take any or all of the following actions until compliance is achieved:

(i) A renter may withhold one-half of the rent otherwise due the owner. If the owner files an action for nonpayment of rent or an action for eviction for nonpayment of rent, the renter must deposit the withheld rent with the appropriate Court when and if the owner requests such deposit of rent with the Court, and if the Court so orders.

(ii) A renter may seek injunctive relief on behalf of herself or himself and on behalf of other affected renters to restrain the owner from demanding or receiving any rent until the owner has complied with this Ordinance.

(b) If an owner demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a renter may notify the owner to return such excess payment or rescind any demand for excess payment within three days. If the owner has not returned any excess rent to the renter or rescinded any demand for excess rent within three days of such notice, the renter may:

(i) Take any of the actions set out in subsection (a) of this Section until compliance is achieved.

(ii) File a damage suit against the owner for actual damages. Upon proof of willful violation of this Ordinance by an owner, the renter shall receive a judgment of up to two hundred dollars (\$200) or three (3) times the amount by which the payment or payments exceeds the maximum lawful rent determined by this Ordinance, whichever is greater.

(c) The City Attorney may bring an action for injunctive relief on behalf of renters seeking compliance by owners with this Ordinance.

Section 11: Retaliation No owner may retaliate against a renter for the renter's assertion or exercise of rights under this Ordinance by threatening to bring or bringing an action for possession, causing the renter to quit involuntarily, decreasing any services or increasing the rent. In an action by or against the renter, evidence of the assertion or exercise by the renter of her or his rights under this Ordinance within three months prior to the alleged act of retaliation shall create a presumption that the owner's conduct was in retaliation for the renter's assertion or exercise of rights under this Ordinance. "Presumption" means that the Court must find the existence of the fact presumed, unless and until evidence is introduced which would support a finding of its nonexistence.

Section 12: Rent Increase Allowed

(a) Notwithstanding Sections 6 and 8 of this Ordinance, an owner may charge a rent greater than the rent allowed under Sections 6 and 8 of this Ordinance if the increased rent represents increased costs actually paid by the owner to the extent these costs exceed the twenty percent (20%) of the property tax savings retained by the owner. The total amount by which rents for a rental unit are increased under the provisions of this Section shall not exceed the total cost increases allowed under this Section reduced by the twenty percent (20%) of the property tax savings retained by the owner. Such increased costs must be related to the rental unit on which the increased rent is charged, and are limited to:

- (i) increased costs resulting from the sale or refinancing pursuant to a sale of a property which requires higher current payments on that property, provided such sale or refinancing is not made to evade provisions of this Ordinance;
- (ii) increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate income taxes;
- (iii) increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;
- (iv) unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and
- (v) increased costs of substantial rehabilitation or capital improvements undertaken after June 6, 1977 and on or before the date of adoption of this Ordinance, or with the informed consent of all renters in the property when such rehabilitation or improvements are undertaken after the date of the adoption of this Ordinance, or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

(b) An owner wishing to increase rents to cover increased costs under this Section must notify renters in writing at least thirty days in advance of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase.

Section 13: Rent Adjustments After January 1, 1980 If, on or after January 1, 1980, the rent for a rental unit covered by this Ordinance is increased by more than five percent (5%) on an annual basis above the maximum allowable rent determined according to this Ordinance for calendar year 1979, the notice to the renter of this increase shall contain a clear and detailed financial statement which documents the reasons for such an increase.

Section 14: Criminal Penalties An intentional failure to comply with the provisions of this Ordinance shall be a misdemeanor.

Section 15: Partial Invalidity If any provision of this Ordinance or application thereof to any person or circumstance is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Appendix A: The Form for the Notice of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979

In accordance with the City of Berkeley Renter Property Tax Relief Ordinance of 1978, this notice informs you of a required reduction in rent for the rental unit located at _____. The amount of the rent reduction has been determined as follows:

The total 1977-78 property taxes which were due for the property which includes your rental unit was _____ dollars. The total 1978-79 property taxes due for this property is _____ dollars. The difference, or total tax savings for this property, reflecting the passage of Proposition 13 on June 6, 1978, amounts to _____ dollars. Eighty percent of this savings, or _____ dollars, is the total, property tax relief to be allocated among units of this property during the calendar year 1979.

The total Base Rent for the property which includes your rental unit, as determined by rents in effect on June 6, 1978, is _____ dollars. (If appropriate: This total Base Rent includes an estimated fair market rental value for owner-occupied units of _____ dollars, and an estimated Base Rent(s) for rental units in this property for which no rent was in effect on June 6, 1978 of _____ dollars, _____ dollars, etc.) The Base Rent for your rental unit is _____ dollars, which is equal to _____ percent of the total Base Rent for the property.

This percentage, multiplied by the total property tax relief for the property equals _____ dollars which is your proportionate share of the property tax relief for the year 1979. Since your rent is paid in _____ installments over calendar year 1979, each of your rental payments of _____ dollars per _____ (the Base Rent for your rental unit) shall be proportionately reduced by _____ dollars per _____, giving you a new rent of _____ dollars per _____.

Signature of owner _____
Date _____

ANALYSIS PREPARED BY THE CITY ATTORNEY OF BERKELEY FOR MEASURE I

This initiative measure, if adopted, would require owners of all rental property in the City of Berkeley, with certain exceptions, to pass along to tenants 80 percent of the property tax relief attributable to the passage of the Jarvis-Gann Initiative (Proposition 13, enacting Article XIII A of the California Constitution) on June 6, 1978.

This initiative measure, if adopted, would establish as the base rent of rental property the rent in effect on June 6, 1978. This initiative measure requires the maximum allowable base rent to remain in effect until December 31, 1978.

This initiative measure would require owners of affected rental property to notify tenants, within 15 days of the date this initiative measure is adopted, of the maximum allowable rent to be in effect until December 31, 1978.

This initiative measure would generally not apply to the following categories of rental property:

- Property exempt from taxation.
- Rental units in hotels, motels, and boarding houses where the occupancy normally does not exceed 14 days.
- Units in non-profit cooperatives.
- Residential rental units subsidized by federal or state funds.
- Fourplexes (or less), one unit of which is occupied by the owner.

With these exceptions, this proposed initiative measure would apply to all residential and commercial property rented, or available for rent, in the City of Berkeley.

Upon issuance of fiscal year 1978-79 tax bills reflecting Proposition 13 tax reductions, this initiative measure, if adopted, would require owners of affected rental property to calculate the "total base rent" for each property and each rental unit.

This initiative measure would further require the owners of affected rental property to allocate equitably among affected rental units not less than 80 percent of the "property tax savings" attributable to Proposition 13. "Property tax savings" is defined by this measure as total taxes due in fiscal year 1977-78, less total taxes due for fiscal year 1978-79.

This measure would further require that for calendar year 1979, the property tax relief to be passed along to tenants shall be apportioned equitably by reducing the

"base rent" of an affected rental unit by an amount equal to that unit's property tax relief allocation.

This measure would require that commencing January 1, 1979 and until December 31, 1979, the maximum allowable rent for any affected rental unit shall be the "base rent," less the property tax relief allocation for that unit.

Notwithstanding the maximum rent generally allowable under this initiative measure, this measure authorizes an owner to increase the maximum allowable rent if increased operating costs actually exceed the 20 percent of property tax savings retained by the owner. Any increased rent for a rental unit must be related to the increased operating costs for that unit. Operating costs for which rent may be increased are limited by this initiative measure to:

- Increased mortgage interest attributable to the sale or refinancing of the rental property.
- Increased taxes (except personal and corporate income taxes).
- Increased insurance, maintenance and utility costs.
- Substantial rehabilitation or capital improvement costs incurred between June 6, 1977 and November 7, 1978; where such costs are incurred between November 7, 1978 and December 31, 1979, the informed consent of all tenants is required unless these costs are incurred to comply with legal habitability requirements or applicable housing codes.

An owner proposing to increase rent must notify tenants 30 days in advance and provide a written statement of the reasons for the increase.

This initiative measure provides for a misdemeanor criminal penalty for an intentional failure by any owner to comply with its provisions.

This initiative measure also provides tenants with several civil remedies to obtain compliance by owners. Such civil remedies include withholding 50 percent of any rent due, commencement of legal action for injunctive relief to restrain the owners from attempting to collect rent which is due, or initiation of legal action to obtain actual money damages from an owner for willful violation of this measure.

This initiative measure prohibits an owner from retaliating against a tenant for the exercise of any of the methods specified to gain compliance.

A similar measure, sponsored by five members of the Berkeley City Council, will also appear on the November 7, 1978, ballot. If both measures receive a majority of votes cast, the measure receiving the greater number of votes shall prevail.

If adopted, this initiative measure will have little or no direct financial impact on the cost of local government.

MICHAEL LAWSON
City Attorney
City of Berkeley

CITY OF BERKELEY
CITY CLERK
CITY HALL
BERKELEY, CA 94704

PRINTED MATTER

ORDINANCE NO. 3317 -B.S.

ADOPTING A TEMPORARY RENT STABILIZATION PROGRAM.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. TITLE.

This Ordinance shall be known as the Temporary Rent Stabilization Ordinance.

Section 2. FINDINGS.

a. The Housing Element of the Berkeley Master Plan of 1977 states that:

(1) Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford (Goal 1).

(2) Existing housing should be maintained and improved (Goal 2).

(3) Berkeley should have an adequate supply of housing throughout the City for persons with special needs (Goal 3).

(4) All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis (Goal 4).

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 3, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978 the electorate of the City of Berkeley passed a Renters Property Tax Relief Ordinance.

e. On October 25, 1979 the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979 the Berkeley City Council held a public hearing at which members of the public expressed their views regarding current housing conditions in Berkeley.

g. The most significant provisions of the 1978 Renters Property Tax Relief Ordinance will expire on December 30, 1979.

h. The development of comprehensive legislation and programmatic remedies by the City will require time for study, evaluation and development. The City Council of the City of Berkeley hereby adopts temporary legislation to assure that, subsequent to December 30, 1979 and prior to the adoption of permanent legislation intended to address the City of Berkeley's housing crisis, the public peace, health and safety are immediately preserved, and that, in particular, the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged are not endangered prior to public consideration and adoption of permanent legislation to protect the public peace, health and safety.

Section 3. PURPOSE.

The purpose of this Ordinance is to regulate rent increases for a temporary period. During this period the City of Berkeley will take the opportunity to study the desirability and feasibility of measures to address the problems resulting from the critical housing shortage presently facing the residents of the City of Berkeley.

Section 4. DEFINITIONS.

a. **Rental Unit:** Any building, structure, or part thereof, or any other real property rented or available for rent for residential use located in the City of Berkeley, together with all services supplied in connection with the use or occupancy of such property.

b. **Tenant:** Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of a rental unit.

c. **Rental Agreement:** An agreement, verbal, written or implied between a landlord and a tenant for the use or occupancy of any residential unit.

d. **Rent:** The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units including, but not limited to, monies demanded or paid for use, occupancy, parking, pets, furnishings, housing services, sublessees and deposits.

e. **Property:** A parcel of real property which is assessed and taxed as an undivided whole.

f. **Landlord:** An owner-of-record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

g. **Skilled Nursing Facility:** "Skilled nursing facility" means a health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility, can be obtained promptly when needed.

h. **Health Facility:** "Health facility" means any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which such persons are admitted for a 24-hour stay or longer.

i. **Fees:** A fee, for the purposes of this ordinance, is a charge fixed by law for services of public officers or for use of a privilege under control of government.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part except for the following:

a. Such rental units which are owned by any government agency.

b. Rental units which are rented primarily to transient guests for a period of less than fourteen (14) days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses.

c. Rental units in non-profit cooperatives owned and controlled by a majority of the residents.

d. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 USC 1471b) or units leased to tenants assisted under the Section 8 program (42 USC 1437f).

e. Rental units in any hospital, skilled nursing facility, asylum, or non-profit home for the aged.

f. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance.

g. Rental units in a residential property which is divided into a maximum of four (4) units where one of such units is occupied by the landlord as his/her principal residence. For the purposes of this subsection, the term landlord shall be defined as the owner of record and shall not include a tenant, subtenant, lessee, or sublessee.

Section 6. MAXIMUM ALLOWABLE RENT.

a. For the duration of this Ordinance, the landlord shall not charge, demand, accept or receive a rent higher than the amount set forth in this Section for any unit covered by the terms of this Ordinance, except as permitted by Section 7 of this Ordinance.

b. For all rental units covered by the terms of this Ordinance the maximum allowable rent shall be the lawful rent in effect on December 30, 1979. For such rental units where no rent was in effect on December 30, 1979, the maximum allowable rent will be the most recent lawful rent in effect for that rental unit during the six months preceding that date. For such rental units where no rent was in effect on December 30, 1979, or during the six months preceding that date, the maximum allowable rent shall be a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on December 30, 1979.

c. The lawful rent for a rental unit shall be the lawful rent which was actually due under the periodic term of the rental agreement, on, or last preceding, December 30, 1979.

Section 7. RENT INCREASE ALLOWED.

a. A landlord may charge a rent greater than the rent allowed under Section 6 of this Ordinance, subject to the limitation contained in subsection c of this Section, if the increased rent represents costs actually paid by the landlord after the effective date of this Ordinance, providing that such costs had not already been the basis of a rent increase allowed under the Renters Property Tax Relief Ordinance of 1978. Such increased costs must be related to the rental unit on which the increased rent is charged and are limited to:

(1) Increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate taxes;

(2) Increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;

(3) Unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and,

(4) Increased costs of substantial rehabilitation or capital improvements undertaken with the informed consent of all tenants in the property or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

b. A landlord wishing to increase rents to cover increased costs under this Section must notify tenants in writing of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase at least 30 days in advance of such rent increase. Receipts substantiating the financial statement provided for in this Section shall be provided by the landlord within 14 days from the date of request if so requested.

c. Rent increases allowed by this Section shall not exceed five percent (5%).

Section 8. TENANT NOTIFICATION.

a. By December 31, 1979 the tenant of each rental unit covered by this Ordinance shall be provided by the landlord with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance.

b. When a rental unit covered by this Ordinance is rented to a new tenant, the landlord shall provide the new tenant with a written notice of the maximum allowable rent as set forth in Section 6 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable.

c. A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

8. If a notice required by Section 8 of this Ordinance has not been provided by the date required, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved:

(1) A tenant may withhold up to the full amount of his or her periodic rent which is allowed under the provisions of this Ordinance. No action for eviction based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

(2) A tenant may seek injunctive relief on behalf of himself and on behalf of other similarly situated tenants to restrain the landlord from demanding or receiving any rent on this unit until the landlord is in compliance with this Ordinance.

(3) A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed by this Ordinance. Upon further proof of a bad faith or bad retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgment of up to seven hundred and fifty dollars (\$750.00) in addition to any actual damages.

b. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

Section 10. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action for eviction, cause the tenant to quit the unit involuntarily, decrease any service or increase the rent where the landlord's dominant intent is retaliation against a renter for the renter's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an eviction action, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence of an assertion or exercise by the tenant of rights under this Ordinance within thirty months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court shall find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption.

Section 11. CRIMINAL PENALTIES.

It shall be unlawful for any person willfully to violate any provision or to fail to comply with any of the requirements of this Ordinance. Any person violating any provision of this Ordinance, or knowingly and intentionally misrepresenting any fact to any officer or employee of this city in registering a rental unit hereunder, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars (\$500.00) or imprisonment not exceeding six months, or by both such fine and imprisonment. Any such person shall be deemed guilty of a separate offense for each day during the commission of which any violation of any of the provisions of this Ordinance is committed, continued or permitted by such person and shall be punishable therefor as provided for in this Ordinance.

Section 12. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 13. NONWAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 14. CONSTRUCTION.

This Ordinance shall be read and interpreted in harmony with the Renter Property Tax Relief Ordinance of 1978 and shall not be construed to nullify, or abridge the provisions of the Renter Property Tax Relief Ordinance of 1978.

Section 15. EFFECTIVE DATE.

This Ordinance shall take effect in the event that Ordinance No. 3210-M.S., (Adopting a Rent Registration and Temporary Rent Stabilization Program) is suspended from going into operation under the provisions of Section 93 of the Charter of the City of Berkeley.

Section 16. EXPIRATION DATE.

The expiration date of this Ordinance shall be June 30, 1980. The June 30, 1980 expiration date of this Ordinance shall not constitute a bar to the pursuit of remedies authorized under this Ordinance, to the commencement or continuation of civil or criminal judicial proceedings instituted in regard to any act in violation of this Ordinance, or to the assertion of any defense under this Ordinance.

Section 17. POSTING.

Copies of this Bill are hereby ordered published by posting with the vote thereon for two (2) days at the ten (10) prominent places in the City of Berkeley as designated by Chapter 1.08 of the Berkeley Municipal Code.

At a regular meeting of the Council of the City of Berkeley, held on the twenty-seventh day of November, 1979, this Bill was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Davis, Denton, Fahren, McDonald and President Newport.

Noes: None.

Abstain: Councilmember Veller.

Not Voting: Councilmember Dean.

Absent: Councilmembers Moore and Segesta.

ATTEST: ELIZABETH J. BRICKELL
Deputy City Clerk and Clerk of the Council

In effect: 12/30/79

TENANTS RIGHTS AMENDMENTS ACT OF 1982

BE IT ORDAINED by the People of the City of Berkeley as follows:

PART A. TITLE AND PURPOSE

This Ordinance shall be known as the Tenants Rights Amendments Act of 1982. The purposes of this Act are to further the purposes of the Rent Stabilization and Eviction for Good Cause Ordinance, as originally enacted on June 3, 1980 and to correct weaknesses found, in practice, in sections of that Ordinance. This Act is meant to amend those sections in order to help ensure that tenants' rights are protected.

PART B. AMENDMENTS

Ordinance 5261-N.S., titled Rent Stabilization and Eviction for Good Cause Ordinance, shall be amended as follows:

Section 1. TITLE.

This Ordinance shall be known as the Rent Stabilization and Eviction for Good Cause Ordinance.

Section 2. FINDINGS.

a. The Housing Element of the Berkeley Master Plan of 1977 states that:

(1) Berkeley residents have the right to decent housing in pleasant neighborhoods which meet standards of adequacy at a range of prices they can afford. (Goal 1)

(2) Existing housing should be maintained and improved. (Goal 2)

(3) Berkeley should have an adequate supply of housing throughout the City for persons with special needs. (Goal 3)

(4) All residents should have equal access to housing opportunities, financing and insurance on a non-discriminatory basis. (Goal 4)

b. On June 6, 1972, the electorate of the City of Berkeley passed a Rent Control Charter Amendment that was later voided by the California Supreme Court as being unconstitutional.

c. On June 5, 1973, the City Council declared the existence of a housing emergency in the City of Berkeley, based upon the Council's finding of a pattern of steadily rising rents, a shortage of decent housing and an increased deterioration of the existing housing stock in the City.

d. On November 7, 1978, the electorate of the City of Berkeley passed a Renter Property Tax Relief Ordinance.

e. On October 25, 1979, the Berkeley City Council, Berkeley Housing Authority, the Berkeley Housing Advisory and Appeals Board, and members of the City's administrative staff held a public workshop regarding the current housing conditions in Berkeley.

f. On October 30, 1979, January 26, 1980 and February 21, 1980, the Berkeley City Council held public hearings at which members of the public expressed their views regarding current housing conditions in Berkeley and legislative proposals for rent stabilization and eviction controls.

g. The most significant provisions of the 1978 Renter Property Tax Relief Ordinance expired on December 30, 1979.

h. On November 27, 1979, the Berkeley City Council passed an ordinance establishing a Temporary Rent Stabilization Program, effective until June 30, 1980.

Section 3. PURPOSE.

The purposes of this Ordinance are to regulate residential rent increases in the City of Berkeley and to protect tenants from unwarranted rent increases and arbitrary, discriminatory, or retaliatory evictions, in order to help maintain the diversity of the Berkeley community and to ensure compliance with legal obligations relating to the rental of housing. This legislation is designed to address the City of Berkeley's housing crisis, preserve the public peace, health and safety, and advance the housing policies of the City with regard to low and fixed income persons, minorities, students, handicapped, and the aged.

Section 4. DEFINITIONS.

a. **BOARD:** The term "Board" refers to the appointed Rent Stabilization Board established by this Ordinance.

b. **COMMISSIONERS:** The members of the Board are denominated Commissioners.

c. **HOUSING SERVICES:** Housing services include but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishing, telephone, parking and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

d. **LANDLORD:** An owner of record, lessor, sublessor or any other person or entity entitled to receive rent for the use or occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

e. **RENT:** The consideration, including any deposit, bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, monies and fair market value of goods or services rendered to or for the benefit of the landlord under the rental agreement.

f. **RENTAL AGREEMENT:** An agreement, oral, written or implied, between a landlord and a tenant for use or occupancy of a rental unit and for housing services.

g. **RENTAL UNIT:** Any unit in any real property, including the land appurtenance thereto, rented or available for rent for residential use or occupancy (including units covered by the Berkeley Live/Work Ordinance No. 5217-N.S.), located in the City of Berkeley, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

h. **PROPERTY:** A parcel of real property which is assessed and taxed as an undivided whole.

i. **TENANT:** Any renter, tenant, subtenant, lessee or sublessee of a rental unit, or successor to a renter's interest, or any group of tenants, subtenants, lessees, or sublessees of any rental unit, or any other person entitled to the use or occupancy of such rental unit.

j. **SKILLED NURSING FACILITY:** A health facility or a distinct part of a hospital which provides the following basic services: skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. It provides 24 hour inpatient care and, as a minimum, includes medical, nursing, dietary, pharmaceutical services and an activity program. The facility shall have effective arrangements, confirmed in writing, through which services required by the patients, but not regularly provided within the facility can be obtained promptly when needed.

k. **HEALTH FACILITY:** Any facility, place or building which is organized, maintained and operated for the diagnosis, care and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more

of these purposes, for one or more persons, to which such persons are admitted for a 24 hour stay or longer.

l. **RECOGNIZED TENANT ORGANIZATION:** Any group of tenants, residing in rental units in the same building or in different buildings operated by the same management company, agent or landlord, which requests to be so designated.

m. **RENT CEILING:** The maximum allowable rent which a landlord may charge on any rental unit covered by this Ordinance.

n. **BASE RENT CEILING:** The maximum allowable rent established under Section 10 of this Ordinance.

o. **FEES:** A fee, for the purpose of this Ordinance, is a charge fixed by law for services of public officers or for use of a privilege under control of government.

Section 5. APPLICABILITY.

This Ordinance shall apply to all real property which is being rented or is available for rent for residential use in whole or in part, except for the following:

a. Rental units which are owned by any government agency. However, the exemption of units owned by the Berkeley Housing Authority from the terms of this Ordinance shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

b. Rental units which are rented primarily to transient guests for a period of use or occupancy less than fourteen (14) consecutive days in establishments such as hotels, motels, inns, tourist homes, and rooming and boarding houses. However, the payment of rent every fourteen (14) days or less shall not by itself exempt any unit from coverage by this Ordinance.

c. Rental units in nonprofit cooperatives owned and controlled by a majority of the residents.

d. Rental units leased by the Berkeley Housing Authority under the Section 23 program (42 U.S.C. Section 1421b) or rental units leased to tenants assisted under the Section 8 program (42 U.S.C. Section 1437f). However, except as may be preempted by state or federal law, the exemption of such rental units from the terms of this Ordinance shall be limited to Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

e. Rental units in any hospital, skilled nursing facility, health facility, asylum, or nonprofit home for the aged.

f. Rental units in a residential property which is divided into a maximum of four (4) units where one of such units is occupied by the landlord as his/her principal residence. Any exemption of rental units established under this subsection (5.f.) shall be limited to rental units that would have been exempt under the provisions of this Ordinance had this Ordinance been in effect on December 31, 1979.

After July 1, 1982, this exemption shall no longer apply to rental units in a residential property which is divided into three (3) or four (4) units. It shall continue to apply to rental units in a residential property which is divided into two (2) units, and which meet all the other requirements of this subsection (5.f.) Rental units which become non-exempt under this provision shall have the provisions of subsections 8.i. and 10.c. applied to them.

g. A rental unit in a residential property where the landlord shares kitchen or bath facilities with the tenant(s) of such rental unit and where the landlord also occupies a unit in the same property as his/her principal residence.

h. For the purposes of Subsections 5.f. and 5.g., the term landlord shall be defined only as the owner of record holding at least fifty (50) percent interest in the property.

i. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of this Ordinance, provided that such new units were not created as a result of rehabilitation or conversion as opposed to new construction. However, the exemption of such newly

constructed units shall be limited to their exemption from the terms of Section 8, Rent Registration; Section 10, Establishment of Base Rent Ceiling and Posting; Section 11, Annual General Adjustment of Rent Ceilings; and Section 12, Individual Adjustments of Rent Ceilings, of this Ordinance.

Section 6. RENT STABILIZATION BOARD.

a. **COMPOSITION:** There shall be in the City of Berkeley a Rent Stabilization Board; the Board shall consist of nine (9) appointed Commissioners. The Board shall elect annually as chairperson one of its members to serve in that capacity.

b. **ELIGIBILITY:** Residents of the City of Berkeley are eligible to serve as Commissioners on the Board.

c. **FULL DISCLOSURE OF HOLDINGS:** All commissioners shall file with the City Clerk a verified statement listing all of their interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years. Such statements shall be made available for public inspection.

d. **APPOINTMENT OF COMMISSIONERS:** Commissioners shall be appointed by members of the Berkeley City Council in accordance with the Fair Representation Ordinance (No. 4780-N.S.), within thirty (30) days after the adoption of this Ordinance.

e. **TERM OF OFFICE:** Commissioners' terms of office shall be in accordance with the Fair Representation Ordinance (City of Berkeley Ordinance No. 4780-N.S.).

f. **POWERS AND DUTIES:** The Board shall have the following powers and duties:

- (1) Set the rent ceilings for all rental units.
- (2) Require registration of all rental units under Section 8.
- (3) Publicize the manner in which the Base Rent Ceiling is established under Section 10.
- (4) To make adjustments in the rent ceiling in accordance with Sections 11 and 12.
- (5) Set rents at fair and equitable levels in view of and in order to achieve the purposes of this Ordinance.
- (6) To issue orders, rules and regulations, conduct hearings and charge fees as set forth below.
- (7) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.
- (8) Report annually to the City Council of the City of Berkeley on the status of rental housing units covered by this Ordinance.
- (9) Request the City Council to remove rent controls under Section 6.q.
- (10) Administer oaths and affirmations and subpoena witnesses and relevant documents.
- (11) Establish rules and regulations for settling civil claims under Section 15.
- (12) Seek injunctive relief under Section 15.
- (13) Pursue civil remedies in courts of appropriate jurisdiction.
- (14) Intervene as an interested party in any litigation brought before a court of appropriate jurisdiction by a landlord or tenant with respect to rental units covered by this Ordinance.
- (15) Hold public hearings.
- (16) Other powers necessary to carry out the purposes of this Ordinance which are not inconsistent with the terms of this Ordinance.
- (17) Except as provided in Section 6.n. of this Ordinance, the Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of Berkeley.

g. **RULES AND REGULATIONS:** The Board shall issue and follow such rules and regulations, including those which are contained in this Ordinance, as will further the purposes of this Ordinance. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of Berkeley.

All rules and regulations and relevant documents explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and shall be available to the public for inspection and copying.

The Board shall publicize this Ordinance so that all residents of Berkeley will have the opportunity to become informed about their legal rights and duties under this Ordinance. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under this Ordinance. The brochure shall be made available to the public.

h. **MEETINGS:** The Board shall hold regularly scheduled meetings. Special meetings shall be called at the request of at least a majority of the Commissioners of the Board. The Board shall hold its initial meeting no later than July 15, 1980.

i. **QUORUM:** Five (5) Commissioners shall constitute a quorum for the Board.

j. **VOTING:** The affirmative vote of five (5) Commissioners of the Board is required for a decision, including all motions, rules, regulations, and orders of the Board.

k. **COMPENSATION:** The Rent Stabilization Board shall be a working Board. In order to compensate Commissioners for their time and work performed as required by this Ordinance, Commissioners shall receive five dollars per hour, but in no case shall compensation for any one Commissioner exceed three thousand dollars in the first twelve month period or in any subsequent annual period that the Board is in operation for services rendered. Procedures and regulations for accounting for hours worked and compensation shall be developed and adopted by the Board and filed with the City Clerk. Upon request by the Board the City Council may annually adjust the hourly compensation rate and the maximum annual sum received by the Commissioners.

l. **DOCKETS:** The Board shall maintain and keep in its office all hearing dockets, which shall be available for public inspection.

m. **VACANCIES:** If a vacancy shall occur on the Board, a qualified person to fill such vacancy shall be appointed in accordance with this Ordinance and the Fair Representation Ordinance (No. 4780-N.S.).

n. **FINANCING:** The Board shall finance its reasonable and necessary expenses for its operation without the use of General Fund monies of the City of Berkeley except as stated in this subsection, by charging landlords an annual registration fee of twelve dollars (\$12.00) per unit, per year in the first year of operation. After the first year, upon request by the Board the City Council may make reasonable annual adjustments in the fee. The Board is also empowered to request and receive funding when and if necessary, from any available source, except the City of Berkeley's General Fund, for its reasonable and necessary expenses, including but not limited to salaries and all other operating expenses.

Notwithstanding the preceding provision of this Section, the City Council of the City of Berkeley shall appropriate as a loan to the Rent Stabilization Board sufficient funds for the reasonable and necessary expenses of the Board during the six month period following the adoption of this Ordinance, said funds to be repaid to the City by the Rent Stabilization Board within one year's period following the adoption of this Ordinance.

o. **STAFF:** the City Manager is authorized to employ and pay staff for the Board, including hearing examiners and inspectors, as may be necessary to perform the Board's functions efficiently in order to fulfill the purposes of this Ordinance.

p. **REGISTRATION:** The Board shall require the registration of all rental units covered by this Ordinance as provided for in Section 8. The Board may also require landlords to provide current information supplementing their registration statements.

q. **DECONTROL:** If the annual average vacancy rate for all rental units in the City of Berkeley exceeds five (5) percent over a six month period, the City Council is empowered, upon request by the Board, at its discretion and in order to achieve the purposes of this Ordinance, to exempt rental units covered by this Ordinance from Sections 8, 10, 11, and 12 of this Ordinance. In determining the vacancy rate for the City of Berkeley the Board and the City Council shall consider all available data and may conduct their own survey. If units are exempted pursuant to this Subsection (6.q.)

coverage shall be reimposed if the City Council finds that the average annual vacancy rate has thereafter fallen below five (5) percent. Prior to any decision to exempt or renew coverage for rental units under this Subsection (6.q.) the Board shall hold at least two public hearings.

r. **CONFLICT OF INTEREST:** Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant. However, a Commissioner shall be disqualified from ruling on a petition for an individual adjustment of a rent ceiling under Section 12, where the Commissioner is either the landlord of the property or a tenant residing in the property that is involved in the petition.

Section 7. SECURITY DEPOSITS.

Any payment or deposit of monies by the tenant, the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed by the landlord, in an interest bearing account at an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation until such time as it is returned to the tenant or entitled to be used by the landlord. The interest earned by said payment or deposit on monies shall be returned to the tenant annually, either through a rent rebate or cash payment, in December of each year. The balance of any interest earned by said payment or deposit on monies shall be returned along with the appropriate part of the principal to the tenant upon departure from the premises.

Section 8. RENT REGISTRATION.

a. The Board shall require all landlords subject to the provisions of this Ordinance to file with the Board by September 1, 1980 a rent registration statement for each rental unit covered by this Ordinance. An owner who has resided in a single family dwelling for at least 365 consecutive calendar days need not file a rent registration statement under the provisions of this Ordinance if he/she rents this single family dwelling to another person or persons for a period not to exceed nine calendar months.

b. Landlords shall provide in their initial rent registration statement the following information:

- (1) The address of each rental unit;
- (2) The name and address of the landlord(s) and the managing agent, if any;
- (3) The date on which the landlord received legal title to or equitable interest in the rental unit;
- (4) The housing services provided for the rental unit;
- (5) The rent in effect on June 6, 1978;
- (6) The rent in effect on December 30, 1979;
- (7) The base rent ceiling;
- (8) The lowest rent in effect between June 6, 1978, and the date of the adoption of this Ordinance;
- (9) The amount of any deposits or other monies in addition to periodic rent demanded or received by the landlord in connection with the use or occupancy of the rental unit;
- (10) Whether the rental unit was vacant or occupied on May 31, 1980;
- (11) Rent in effect on December 31, 1981.

c. All rent registration statements provided by landlords in accordance with this Ordinance shall include an affidavit signed by the landlord declaring under penalty of perjury that the information provided in the rent registration statement is true and correct.

d. The first annual registration fee of twelve dollars (\$12.00) per unit shall be paid by the landlords to the Board no later than September 1, 1980. Subsequent annual registration fees set in accordance with Section 6.n. of this Ordinance shall be paid no later than September 1 of each year.

e. The Board shall provide forms for the registration information required by this Section and shall make other reasonable efforts to facilitate the fulfillment of the requirements set forth in this Section.

f. Every annual registration fee required by this Ordinance which is not paid on or before September 1 is declared delinquent, and the Board shall add to said registration fee and collect a penalty of one hundred (100) percent of the fee so delinquent in addition to the fee. Every sixty (60) days that the fee and penalty remain delinquent, the penalty shall be increased by one hundred (100) percent of the original fee. The Board may waive the penalty if payment is made within thirty (30) days of the original due date. A landlord may request the Board to waive the penalty if he/she can show good cause for the delinquent payment.

g. The amount of any registration fee and penalty imposed by the provisions of this Ordinance shall be deemed a debt to the City.

h. Within thirty days after the filing of a rent registration statement, the Board shall provide a true and correct copy of said statement to the occupant of the respective unit.

i. Landlords of formerly exempt units shall register within sixty (60) days of coming under coverage of this Ordinance. The registration fee for this first-time registration shall be pro-rated based upon the number of months remaining to the next September 1 annual registration deadline.

j. No landlord shall be deemed to be in compliance with this Section with respect to a given unit until the landlord has completed registration for all covered units in the same property. Registration shall be deemed complete when all required information has been provided and all outstanding fees and penalties have been paid.

k. Registration fees shall not be passed along to the tenants without the express, prior approval of the Board. Under no circumstances shall penalties be passed along to tenants.

Section 9. USE AND CONFIDENTIALITY OF INFORMATION SUBMITTED TO BOARD.

a. All information and forms required by this Ordinance and submitted to the Board shall not be used by any other governmental unit of the City of Berkeley for the enforcement of City of Berkeley Ordinances other than this Ordinance.

b. The Board shall adopt rules and regulations providing for the confidentiality of information submitted to the Board in support of a petition for an individual rent ceiling adjustment under Section 12 of this Ordinance when such confidentiality is deemed necessary by the Board.

Section 10. ESTABLISHMENT OF BASE RENT CEILING AND POSTING.

a. **Base Rent Ceiling.** Upon adoption of this Ordinance, no landlord shall charge rent for any rental unit covered by the terms of this Ordinance affecting rents in an amount greater than the lawful rent which was actually due and payable on, or last preceding, May 31, 1980, under the periodic term of the rental agreement, in accordance with the provisions of the Temporary Rent Stabilization Ordinance, No. 5212-N.S., except as permitted by the Board under Sections 11 and 12 of this Ordinance. Such lawful rent in effect on May 31, 1980, is the base rent ceiling and is a reference point from which the rent ceiling shall be adjusted in accordance with Sections 11 and 12. For such rental units where no rent was in effect on May 31, 1980, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date. For such rental units where no periodic rent was in effect on May 31, 1980, or during the six months preceding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units in the City of Berkeley on May 31, 1980.

b. **Posting.** The Board may establish reasonable rules and regulations for the posting of rent ceiling and other relevant information to further the purposes of this Ordinance.

c. **Previously Exempt Units.** For rental units specified in Subsection 5.f., the base rent ceiling shall be the rent in effect on December 31, 1981. For such rental units where no rent was in effect on December 31, 1981, the base rent ceiling shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceeding that date. For such rental units where no periodic rent was in effect on December 31, 1981, or during the six months preceeding that date, the base rent ceiling shall be a good faith estimate of the median rent in effect for comparable units, located in the same census tract, and similar in age, size, maintenance, upkeep, and services.

Section 11. ANNUAL GENERAL ADJUSTMENT OF RENT CEILINGS.

a. Once each year, the Board shall consider setting and adjusting the rent ceiling for all rental units covered by this Ordinance in general and/or particular categories of rental units covered by this Ordinance deemed appropriate by the Board. The Board shall hold at least two public hearings prior to making any annual general adjustment of the rent ceilings. ~~The first such public hearing shall be conducted no later than October 31, 1980, and the first annual general adjustment shall be made no later than December 31, 1980.~~ The Board shall publish and publicize notices of the date, time, and place of the public hearings at least thirty (30) days prior to the hearing date. The two required public hearings shall be conducted and the annual general adjustment shall be set between September 1 and October 31, of each year. The annual adjustment shall become effective the following January 1.

b. In making annual general adjustments of the rent ceiling, the Board shall:

(1) Adjust the rent ceiling upward by granting those landlords who pay for utilities a utility adjustment for increases in the City of Berkeley for utilities.

(2) Adjust the rent ceiling upward by granting landlords a property tax, maintenance and operating expense increase adjustment (exclusive of utilities) for increases in the City of Berkeley for property taxes and maintenance and operating expenses.

(3) Adjust the rent ceiling downward by requiring landlords to decrease rents for any decreases in the City of Berkeley for property taxes.

(4) Adjust the rent ceiling downward by requiring landlords who pay for utilities to decrease rents for any decreases in the City of Berkeley for utilities.

In adjusting rents ceilings under this subsection, the Board shall adopt a formula or formulas of general application. This formula will be based upon ~~a survey of the annual rent registration forms, surveys, information and testimonies presented at public hearings, and other available data indicating increases or decreases in the expenses relating to the rental housing market in the City of Berkeley set forth in this subsection.~~ For maintenance and operating expense adjustments, the Board may also use survey data from surrounding communities where appropriate. The Board shall make no more than one annual adjustment of rent ceilings per rental units per year.

Adoption of a formula greater than forty-five percent (45%) of the increase in the Consumer Price Index for the twelve months ending the previous June 30 shall require the affirmative vote of six (6) Commissioners, other provisions notwithstanding. Adoption of such a formula shall be a specific and special exception to the requirement of only five (5) affirmative votes to make a decision. For the purposes of this subsection, the Consumer Price Index shall mean the Consumer Price Index for all urban consumers in San Francisco—Oakland, all items (1967 equals 100), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor, as it pertains to the City of Berkeley.

c. An upward general adjustment in rent ceilings does not automatically provide for a rent increase. Allowable rent increases pursuant to a general upward adjustment shall become effective only after the landlord gives the tenant at least a thirty (30) days written notice of such rent increase and the notice period expires.

d. If the Board makes a downward general adjustment in the rent ceilings, landlords of rental units to which this adjustment applies shall give tenants of such rental units written notice of the rent decrease to which they are entitled. Such rent decreases shall take effect not later than thirty (30) days after the effective date set by the Board for the downward general adjustment.

e. If the maximum allowable rent specified under this Ordinance for a rental unit is greater than the rent specified for such unit in the rental agreement, the lower rent specified in the rental agreement shall be the maximum allowable rent until the rental agreement expires. If the maximum allowable rent specified under this Ordinance for a rental unit is less than the rent specified for such unit in the rental agreement, the lower rent specified under this Ordinance shall be the maximum allowable rent.

f. No rent increase pursuant to an upward general adjustment of a rent ceiling shall be effective if the landlord:

(1) Has continued to fail to comply, after order of the Board, with any provisions of this Ordinance and/or orders or regulations issued thereunder, or

(2) Has failed to bring the rental unit into compliance with the implied warranty of habitability, or

(3) Has failed to make repairs as ordered by the Housing Inspection Services of the City of Berkeley, or

(4) Has failed to completely register by September 1, except as provided in Subsection 11.g. below.

g. The amount of an upward general adjustment for which a landlord shall be eligible shall decrease by ten (10) percent per month for each month beyond December 1 for which the landlord fails to register.

h. A landlord who is ineligible to raise rents under an upward general adjustment for an entire calendar year shall not be eligible to raise rents under that particular general adjustment in future years.

Section 12. INDIVIDUAL ADJUSTMENTS OF RENT CEILINGS.

a. **Petitions.** Upon receipt of a petition by a landlord and/or tenant, the rent ceiling of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board. The Board may set a reasonable per unit fee based upon the expenses of processing the petition to be paid by the petitioner at the time of filing. No petition shall be filed before September 1, 1980. Notwithstanding any other provision of this Section, the Board or hearing examiner may refuse to hold a hearing and/or grant an individual rent ceiling adjustment for a rental unit if an individual hearing has been held and decision made with regard to the rent ceiling for such unit within the previous six months.

b. **Hearing Procedure.** The Board shall enact rules and regulations governing hearings and appeals of individual adjustments of rent ceilings which shall include the following:

(1) **Hearing Examiner.** A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustments of rent ceilings and shall have the power to administer oaths and affirmations.

(2) **Notice.** The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

(3) **Time of Hearing.** The hearing officer shall notify all parties as to the time, date and place of the hearing.

(4) **Records.** The hearing examiner may require either party to an individual rent ceiling adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the City to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at the office of the Board. In cases where information filed in a petition for an individual rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

(5) **Open Hearings.** All individual rent ceiling adjustment hearings shall be open to the public.

(6) **Right of assistance.** All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.

(7) **Hearing Board.** The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record

of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions, orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.

(8) **Quantum of Proof and Notice of Decision.** No individual rent ceiling adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceedings shall also be notified of their right to and the time limit for any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 18 of this Ordinance.

(9) **Consolidation.** All landlord petitions pertaining to tenants in the same building shall be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(10) **Appeal.** Any person aggrieved by the decision of the hearing examiner may appeal to the Board or to any appeals panel of the Board established by the Board, so long as such panel has at least three (3) Commissioners. On appeal the Board or panel shall affirm, reverse, remand, or modify the decision of the hearing examiner. The Board or panel may conduct a new (de novo) hearing or may act on the basis of the record before the hearing examiner without holding a hearing. An appeal to the Board shall be filed no later than thirty (30) days after receipt of the notice of the decision of the hearing examiner. The Board may set a reasonable appeal fee to be paid by the appellant at the time of filing the appeal.

(11) **Finality of Decision.** The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board or panel reverses or modifies the decision of the hearing examiner, the Board shall order the appropriate party to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiner's decision been the same as that of the Board's.

(12) **Time for Decision.** The rules and regulations adopted by the Board shall provide for final Board action on any individual rent adjustment petition within one hundred and twenty (120) days following the date of filing of the individual rent ceiling adjustment petition, unless the conduct of the petitioner or other good cause is responsible for the delay.

(13) **Board Action in Lieu of Reference to Hearing Examiner.** The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for a rent ceiling adjustment without the petition first being heard by a hearing examiner.

c. In making individual adjustments of the rent ceiling, the Board or the hearing examiner shall consider the purposes of this Ordinance and shall specifically consider all relevant factors, including (but not limited to):

- (1) Increases or decreases in property taxes;
- (2) Unavoidable increases or any decreases in maintenance and operating expenses;
- (3) The cost of planned or completed capital improvements to the rental unit (as distinguished from ordinary repair, replacement and maintenance) where such capital improvements are necessary to bring the property into compliance or maintain compliance with applicable local code requirements affecting health and safety, and where such capital improvement costs are properly amortized over the life of the improvement;
- (4) Increases or decreases in the number of tenants occupying the rental unit, living space, furniture, furnishings, equipment, or other housing services provided, or occupancy rules;
- (5) Substantial deterioration of the controlled rental unit other than as a result of normal wear and tear;

(6) Failure on the part of the landlord to provide adequate housing services, or to comply substantially with applicable state rental housing laws, local housing, health and safety codes, or the rental agreement;

(7) The pattern of recent rent increases or decreases;

(8) The landlord's rate of return on investment. In determining such return, all relevant factors, including but not limited to the following shall be considered: the landlord's actual cash down payment, method of financing the property, and any federal or state tax benefits accruing to landlord as a result of ownership of the property;

(9) Whether or not the property was acquired or is held as a long-term or short-term investment; and

(10) Whether or not the landlord has received rent in violation of the terms of this Ordinance or has otherwise failed to comply with the Ordinance.

It is the intent of this Ordinance that individual upward adjustments in the rent ceilings on units be made only when the landlord demonstrates that such adjustments are necessary to provide the landlord with a fair return on investment.

d. No individual upward adjustment of a rent ceiling shall be authorized by the Board by reason of increased interest or other expenses resulting from the landlord's refinancing the rental unit if, at the time the landlord refinanced, the landlord could reasonably have foreseen that such increased expenses could not be covered by the rent schedule then in existence, except where such refinancing is necessary for the landlord to make capital improvements which meet the criteria set forth in Section 12.c.(3). This paragraph shall only apply to that portion of the increased expenses resulting from the refinancing that were reasonably foreseeable at the time of the refinancing of the rental unit and shall only apply to rental units refinanced after the date of adoption of this Ordinance.

e. Except for cases of individual hardship as set forth in Subsection 12.i. of this Ordinance, no individual upward adjustment of a rent ceiling shall be authorized by the Board because of the landlord's increased interest or other expenses resulting from the sale of the property, if at the time the landlord acquired the property, the landlord could have reasonably foreseen that such increased expenses would not be covered by the rent schedule then in effect. This Subsection (12.e.) shall only apply to rental units acquired after the date of adoption of this Ordinance.

f. No upward adjustment of an individual rent ceiling shall be authorized by the Board under this Section if the landlord:

- (1) Has continued to fail to comply, after order of the Board, with any provisions of this Ordinance and/or orders or regulations issued thereunder by the Board, or
- (2) Has failed to bring the rental unit into compliance with the implied warranty of habitability.

g. Allowable rent increases pursuant to an individual upward adjustment of the rent ceiling shall become effective only after the landlord gives the tenant at least a thirty (30) day written notice of such rent increase and the notice period expires.

h. If the Board makes a downward individual adjustment of the rent ceiling, such rent decrease shall take effect no later than thirty (30) days after the effective date set by the Board for the downward adjustment.

i. No provision of this Ordinance shall be applied so as to prohibit the Board from granting an individual rent adjustment that is demonstrated necessary by the landlord to provide the landlord with a fair return on investment.

Section 13. GOOD CAUSE REQUIRED FOR EVICTION

a. No landlord shall be entitled to recover possession of a rental unit covered by the terms of this Ordinance unless said landlord shows the existence of one of the following grounds:

- (1) The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under the provisions of state or local law, unless the tenant has withheld rent pursuant to applicable law; and said failure has continued after service on the tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

(2) The tenant has continued, after written notice to cease, to substantially violate any of the material terms of the rental agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the tenant or made part of the rental agreement; and provided further that, where such terms have been accepted by the tenant or made part of the rental agreement subsequent to the initial creation of the tenancy, the landlord shall have first notified the tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

(3) The tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.

(4) The tenant has refused to agree to a new rental agreement upon expiration of a prior rental agreement, but only where the new rental agreement contains provisions that are substantially identical to the prior rental agreement, and is not inconsistent with local, state and federal laws.

(5) The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants or occupants of the premises.

(6) The tenant has, after written notice to cease, refused the landlord access to the unit as required by state or local law.

(7) (A) The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

(B) Where such repairs can be completed in a period of sixty or fewer days, and the tenant, within thirty days after the service of a notice of termination of his or her tenancy, agrees in writing to vacate the premises during the period required to complete the repairs at no charge to the landlord, other than abatement of the obligation to pay rent for the premises during the period required to complete the repairs, the landlord may not recover possession pursuant to this Subsection 13.a.(7) unless the tenant shall fail or refuse to vacate the premises in accordance with such agreement.

(C) Where the landlord owns any other residential rental units in the City of Berkeley, and any such unit is vacant and available at the time of service of the written notice terminating the tenancy, or at any time thereafter until the earlier of the tenant's vacating the premises or the entry of a judgment by a court of competent jurisdiction awarding possession of the premises to the landlord, the landlord shall, as a condition of obtaining possession pursuant to this Subsection 13.a.(7), notify tenant in writing of the existence and address of each such vacant rental unit and offer tenant the right, at the tenant's option:

(1) to enter into a rental agreement (to be designated as a "temporary rental agreement") on any available rental unit which the tenant may choose, at a rent not to exceed the lesser of the lawful rent which may be charged for such available rental unit or the lawful rent in effect, at the time of the notice of termination of tenancy, on the unit being vacated, said rental agreement to be for a term of the lesser of ninety days or until completion of repairs on the rental unit being vacated by tenant, or;

(2) to enter into a new rental agreement or lease for such available rental unit at a rent not to exceed the lawful rent which may be charged for such available rental unit.

(D) Where the landlord recovers possession under this subsection 13.a. (7), the tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. In the event landlord files an application for an individual rent adjustment within six months following the completion of the work, the tenant shall be a party to such proceeding the same as if he or she were still in possession, unless the landlord shall submit, with such application, a written waiver by the tenant of his or her right to re-occupy the premises pursuant to this subsection.

(8) The landlord, after having obtained all necessary permits from the City of Berkeley, seeks in good faith to recover possession of the rental unit, in order to remove the rental unit from the market by demolition.

(9) The landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the landlord's spouse or by the landlord's or the landlord's spouse's child, or parent, brother, sister, grandparents or grandchildren. For the purposes of this subsection 13.a.(9), the term landlord shall be defined as the owner of record, as of the time of giving of a notice terminating the tenant's tenancy, and at all times thereafter to and including the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord, holding at least a 50% interest in the property and shall not include a lessor, sublessor, or agent of the owner of record. The landlord may not recover possession under this subsection 13.a.(9) if a comparable unit is was, at the time of the landlord's decision to seek to recover possession of the rental unit, already vacant and available in the property, or if a comparable unit thereafter becomes vacant in the property at any time until the earlier of the tenant's surrender of possession of the premises or the entry of a judgment of a court of competent jurisdiction awarding possession of the premises to the landlord. In an action by or against the tenant, evidence that a comparable unit was vacant and available in the property within ninety days prior to the date of a notice terminating the tenant's tenancy shall create a presumption that such unit was vacant and available at the time of the landlord's decision to seek to recover possession of the premises. "Presumption" means that the Court must find the existence of the presumed fact unless and until the contrary is proven by a preponderance of the evidence.

(10) A landlord or lessor seeks in good faith to recover possession of the rental unit for his/her occupancy as a principal residence, where the landlord or lessor has previously occupied the rental unit as his/her principal residence and has the right to recover possession of the unit for his/her occupancy as a principal residence under an existing rental agreement with the current tenants.

(11) The tenant fails to vacate a rental unit occupied under the terms of a temporary rental agreement entered into pursuant to the provisions of subsection 13.a.(7)(C), following expiration of the term of said temporary rental agreement, and following written notice of the availability of tenant's previous rental unit for re-occupancy by tenant (if the term of the rental agreement has expired by reason of the completion of repairs on the old rental unit), or of written notice to quit (if the term of the rental agreement has expired by reason of the expiration of a period of ninety days).

b. A landlord's failure to specify good cause as listed above in subsections 1 through 10 11 of Section 13.a. in the notice of termination or the notice to quit and in the complaint for possession shall be a defense to any action for possession of a rental unit covered by the terms of this Ordinance.

c. In any action to recover possession of a rental unit covered by the terms of this Ordinance, except an action to recover possession under subsections 13.a.(7), and 13.a.(8) or 13.a.(11), a landlord shall allege, as to each rental unit on the property, substantial compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with the implied warranty of habitability and compliance as of the date of the notice of termination or notice to quit and as of the date of the commencement of the action for possession with Sections 10 (Rent Ceiling) and 8 (Rent Registration) of this Ordinance.

d. The landlord shall file with the Board a copy of any notice of termination, notice to quit, and/or summons and complaint, within ten (10) days after the tenant has been served with such notice or summons and complaint.

Section 14. RETALIATION PROHIBITED.

No landlord may threaten to bring, or bring, an action to recover possession, cause the tenant to quit the unit involuntarily, serve any notice to quit or notice of termination of tenancy, decrease any services or increase the rent where the landlord's intent is retaliation against the tenant for the tenant's assertion or exercise of rights under this Ordinance. Such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the tenant for actual and punitive damages and injunctive relief. In an action by or against a tenant, evidence

of the assertion or exercise by the tenant of rights under this Ordinance within six months prior to the alleged act of retaliation shall create a presumption that the landlord's act was retaliatory. "Presumption" means that the Court must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence its nonexistence is proven by a preponderance of the evidence. A tenant may assert retaliation affirmatively or as a defense to the landlord's action without the aid of the presumption regardless of the period of time which has elapsed between the tenant's assertion or exercise of rights under this Ordinance and the alleged act of retaliation.

Section 15. REMEDIES.

a. **For Violation of Rent Ceilings or Failure to Register.** If a landlord fails to register in accordance with Section 8 of this Ordinance, or if a landlord demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a tenant may take any or all of the following actions until compliance is achieved:

(1) A tenant may petition the Board for appropriate relief. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has wilfully and knowingly failed to register a rental unit covered by this Ordinance or violated the provisions of Sections 10, 11 and 12 of this Ordinance, the Board may authorize the tenant of such rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is brought into compliance with this Ordinance. After a rental unit is brought into compliance, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not in compliance. Whether or not the Board allows such withholding, no landlord who has failed to comply with the Ordinance shall at any time increase rents for a rental unit until such unit is brought into compliance.

(2) A tenant may withhold up to the full amount of his or her periodic rent which is charged or demanded by the landlord under the provisions of this Ordinance. In any action to recover possession based on nonpayment of rent, possession shall not be granted where the tenant has withheld rent in good faith under this Section.

(3) A tenant may seek injunctive relief on behalf of herself or himself to restrain the landlord from demanding or receiving any rent on the unit until the landlord has complied with the terms of this Ordinance.

(4) A tenant may file a damage suit against the landlord for actual damages when the landlord receives or retains any rent in excess of the maximum rent allowed under this Ordinance. Upon further proof of a bad faith claim by the landlord or the landlord's retention of rent in excess of the maximum rent allowed by this Ordinance, the tenant shall receive a judgment of up to seven hundred and fifty dollars (\$750.00) in addition to any actual damages.

b. **For Violation of Eviction Proceedings.** If it is shown in the appropriate court that the event which the landlord claims as grounds to recover possession under Subsection 13.a.(7), Subsection 13.a.(8), Subsection 13.a.(9), or Subsection 13.a.(10) is not initiated within two months after the tenant vacates the unit, or it is shown the landlord's claim was false or in bad faith, the tenant shall be entitled to regain possession and to actual damages. If the landlord's conduct was willful, the tenant shall be entitled to damages in an amount of \$750 or three times the actual damages sustained, whichever is greater.

c. The City Attorney may bring an action for injunctive relief on behalf of the City or on behalf of tenants seeking compliance by landlords with this Ordinance.

d. The Board may seek injunctive relief to restrain or enjoin any violation of this Ordinance or of the rules, regulations, orders and decisions of the Board.

e. If a tenant fails to bring a civil or administrative action within one hundred and twenty (120) days from the date of the first occurrence of a violation of this Ordinance, the Board may either settle the claim arising from the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted may not bring an action against the landlord in regard to the same violation for which the Board has made a settlement or brought an action. In the event the Board settles the

claim it shall be entitled to retain from any payments made by the landlord, the costs it incurred in settlement, and the tenant aggrieved by the violation shall be entitled to the remainder.

Section 16. PARTIAL INVALIDITY.

If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Section 17. NONWAIVERABILITY.

Any provision in a rental agreement which waives or modifies any provision of this Ordinance is contrary to public policy and void.

Section 18. JUDICIAL REVIEW.

A landlord or tenant aggrieved by any action or decision of the Board may seek judicial review in a court of appropriate jurisdiction.

Section 19. CRIMINAL PENALTIES.

Any landlord who is found by a court of competent jurisdiction to be guilty of a willful violation of this Ordinance shall be subject to up to a five hundred dollar (\$500) fine and/or ninety (90) days in jail for a first offense and up to a three thousand dollar (\$3,000) fine and/or one year in jail for any subsequent offenses.

PART C. EFFECT OF PARTIAL INVALIDITY.

If any provision of this Act or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Act are severable. This Act is intended to amend the provisions of the Rent Stabilization and Eviction for Good Cause Ordinance, and, in the event any provision of this Act or application thereof is held to be invalid, then the provisions of that Ordinance as in effect prior to their Amendment by this Act shall be deemed to apply.

CITY OF BERKELEY

DATE: March 6, 1984

Memorandum

TO: JACQUELINE FOSTER, Program Chief, Rent Stabilization Program

FROM: EDWARD AMOAH, Associate Administrative Analyst *EA*SUBJECT: REPORT ON PROPERTY TAX ASSESSMENT WITH REGARD TO BOUNDARY SHARING

I talked to Margaret Wilcox of the Property Records Section, Department of Finance, Berkeley Zoning Section staff, and Joe Anderson of Alameda County Property Tax Assessment office, regarding the above subject. The following information was gathered:

Property Tax Assessment and Boundary Sharing between the City of Berkeley and the City of Oakland

Whenever a piece of property is situated between the two cities, this is what happens:

If the greater portion of the property is situated, for example, in Oakland and the other part is in Berkeley, the tax on the property is first of all assessed. In order for Alameda County to determine which City should get the greater part of the property tax, the County has to find out in terms of measurement what part of the property is in which city. For example, the property assessment tax on a building costing \$100,000 may be \$600 per annum. If three-fourths of the property is in Berkeley and one-fourth is in Oakland area, the former will get three-fourths of the amount, that is \$450 and the latter will receive \$150.

To Whom the Money is Paid

All property assessment payments go to Alameda County and Alameda County will in turn make payments to the cities involved, in this case, the City of Berkeley and the City of Oakland.

There is one interesting thing that I learned during my research and which I want to share with you. There are houses at the border of the City of Oakland which use Berkeley addresses even though these properties are physically located in Oakland. The same situation exists in Berkeley. I understand this is done to ease postal problems.

Who picks up the Garbage

There is also a situation where the greater part of a property, including the back side, is situated in one city and the other side falling within the jurisdiction of the other city. In order to determine which city is responsible for picking up the garbage, you will have to consider which city has easy access into the property area in question. For instance, a house which is situated at the borders of Berkeley and Oakland may have one half of it falling within the jurisdiction of one city and the other

March 6, 1984

Memo to Jacqueline Foster

Report on Property Tax Assessment with
Regard to Boundary Sharing

half within the authority of the other. If it happens that there is no street in between the one-half of the property and Berkeley but there is a street just by the house on the side of Oakland, then the latter will have the responsibility of picking up the garbage. The same holds true even if one-fourth of the house or property falls within the domain of Oakland.

Property Tax Sharing Between Two Counties

According to Joe Anderson of Alameda County Property Tax Assessment Office, the method used to share property taxes between Alameda County and Contra Costa County is the same as the one used by City of Berkeley and City of Oakland.

Police Services

Police Services offered to a house or a property which is situated both on the boarders of the City of Berkeley and the City of Oakland will solely depend upon the address that this particular piece of property uses. If the property address is in Berkeley then its residents will depend on the City of Berkeley Police for the necessary Police protection.

Issue of Permits

The issue of permits for additional construction work or an extension to a house, works the same way as that of police protection explained above. If the address of the property is in Oakland, for example, the owner of the property will have to obtain a permit from the City of Oakland before he/she can undertake any extension work on the property.

CITY OF BERKELEY

Memorandum

DATE: February 23, 1984

TO: JACQUELINE FOSTER, Division Chief, Rent Stabilization Program

FROM: EDNA HAGGERTY, Administrative Secretary

SUBJECT: CONFLICT OF INTEREST CODE RESEARCH FOR THE RENT STABILIZATION BOARD

At your request, I attempted to determine what transpired after July 7, 1981 when the City Council adopted Appendix A and B of the Conflict of Interest Code for the Rent Board, but referred Appendix C back to the Board to await further statements on items raised; the report due September 1. (They also adopted the Code.)

As you know, the City Council recesses for the month of August. The first Council meeting after the August recess in 1981 was September 8, 1981. Both Charles Connors of the City Clerk staff and myself researched the Council agendas from July 7, 1981 until the end of year 1981. No item regarding the Rent Board's Conflict of Interest Code appeared before the Council again in 1981.

Marjorie Woods, Agenda Coordinator in the City Manager's office, remembers tickling this report and vaguely feels that it never appeared before the Council again. However, she only needs to retain her report ticklers for two years, and just recently destroyed same. She could only refer me to the City Clerk Department or the Legal Department.

Between the information we have in our Conflict of Interest Code folder, and the obvious fact that it never appeared before the Council in 1981, it appears to me that Council Report #414 was referred to the City Attorney's office for action and never went any further.

The Conflict of Interest Code with Appendix A and B, as passed by the Council on July 7, 1981, is attached along with the appropriate Resolution No. 50,835-N.S.

Attachments

EH:eh

RESOLUTION NO. 50,835 -N.S.

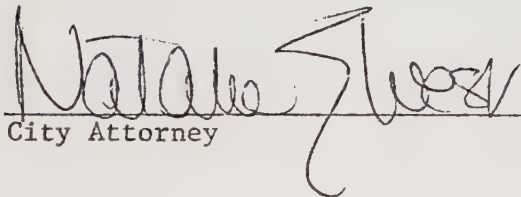
ADOPTING CONFLICT OF INTEREST CODE FOR THE RENT STABILIZATION BOARD.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the Conflict of Interest Code for the Rent Stabilization Board is hereby adopted, including Appendixes A and B, a copy of said Code to be filed in the office of the City Clerk.

FURTHER, RESOLVED, that Appendix C to said Code is hereby referred back to the Rent Stabilization Board to await further statements on questions raised by this Council, said Board to report back by September 1, 1981.

Approved as to form:



City Attorney

RENT STABILIZATION BOARD

CONFLICT OF INTEREST CODE

Adopted July 7, 1981

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Adm. Code Sections 18100, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this Conflict of Interest Code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on financial interests.

(3) Section 3. Disclosure Categories.

This Code does not establish any disclosure obligation for those designated employees who are also specified in Government Code Section 87200 if they are designated in this Code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their financial interests pursuant to Article 2 of Chapter 7 of the

Political Reform Act, Government Code Sections 87200, et seq.^{1/} Such persons are covered by this Code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of financial interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those financial interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the financial interests set forth in a designated employee's disclosure categories are the kinds of financial interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees required to file statements of

^{1/} Designated employees who are required to file statements of economic interests under any other agency's Conflict of Interest Code, or under Article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code Section 81004.

economic interests pursuant to this Conflict of Interest Code to file in accordance with one of the following procedures:^{2/}

(A) All designated employees shall file statements of economic interests with the agency. Upon receipt of the statements of economic interests of the head of the agency and members of boards or commissions not under a department of state or local government, the agency shall make and retain a copy of each and forward the originals of these statements to the code reviewing body, which shall be the filing officer with respect to these statements. Such statements shall be forwarded to the code reviewing body within five days after the filing deadline or five days after receipt in the case of statements filed late.

(B) All designated employees shall file statements of economic interests with the agency, which shall make and retain a copy and forward the

^{2/} See Government Code Section 81010 and 2 Cal. Adm. Code Section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

originals to the code reviewing body, which shall be the filing officer.

(C) All designated employees shall file statements of economic interests with the code reviewing body.

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this Code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within thirty days after the effective date of this Code. Thereafter, each person already in a position when it is designated by an amendment to this Code shall file an initial statement within thirty days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this Code shall file statements within thirty days after assuming the designated positions, or if subject to State Senate confirmation, thirty days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within thirty days after leaving office.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements. Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the Code.

(B) Contents of Assuming Office Statements. Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the

previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the Code or the date of assuming office whichever is later.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investments and Real Property

Disclosure. When an investment or an interest in real property^{3/} is required to be reported,^{4/} the statement shall contain the following:

^{3/} For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

^{4/} Investments and interests in real property which have a fair market value of less than \$1,000 are not investments
(continued next page)

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;

3. The address or other precise location of the real property;

4. A statement whether the fair market value of the investment or interest in real property exceeds one thousand dollars (\$1,000), exceeds ten thousand dollars (\$10,000), or exceeds one hundred thousand dollars (\$100,000).

(Footnote 4 continued)

and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

(B) Personal Income Disclosure. When personal income is required to be reported,^{5/} the statement shall contain:

1. The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), or greater than ten thousand dollars (\$10,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor

^{5/} A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,^{6/} the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

^{6/} Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Disqualification.

No designated employee shall make, participate in making, or use his or her official positions to influence the making of any governmental decision which will foreseeably have a material financial effect, distinguishable from its effect on the public generally, on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth more than one thousand dollars (\$1,000);

(B) Any real property in which the designated employee has a direct or indirect interest worth more than one thousand dollars (\$1,000);

(C) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the designated employee within twelve months prior to the time when the decision is made; or

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting

body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9) Section 9. Manner of Disqualification.

When a designated employee determines that he or she should not make a governmental decision because he or she has a financial interest in it, the determination not to act must be accompanied by disclosure of the financial interest. In the case of a voting body, this determination and disclosure shall be made part of the agency's official record; in the case of a designated employee who is the head of an agency, this determination and disclosure shall be made in writing to his or her appointing authority; and in the case of other designated employees, this determination and disclosure shall be made in writing to the designated employee's supervisor.

(10) Section 10. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this Code may request assistance from the Fair Political Practices Commission pursuant to Government Code Section 83114 or from the attorney for his or her agency, provided that nothing in this

section requires the attorney for the agency to issue any formal or informal opinion.

(11) Section 11. Violations.

This Code has the force and effect of law.

Designated employees violating any provision of this Code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code Sections 81000 - 91014. In addition, a decision in relation to which a violation of the disqualification provisions of this Code or of Government Code Section 87100 has occurred may be set aside as void pursuant to Government Code Section 91003.

Gov. Code Sections 87300-87302

History: (1) New section filed as emergency 4/2/80; effective upon filing.
(2) Amendment (b) filed 1/9/81; effective 2/8/81.
(3) Amendment to (b) (7) (B) 1.; filed 12/27/82; effective 1/26/83.

APPENDIX A: LIST OF DESIGNATED EMPLOYEE POSITIONS

<u>Designated Employee Positions</u>	<u>Disclosure Categories</u>
Commissioners (Board Members)	1,2,3,
Director	1,2,3
Associate Attorney	2
Assistant Attorney	2
Senior Hearing Examiner	2
Hearing Examiner	2
Administrative Analyst	2,3
Community Services Specialist	2
Paralegal	2
Consultant*	2

*With respect to Consultants, the Director may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in these categories. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director shall forward a copy of this determination to the City Clerk. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.

(over)

APPENDIX B: DISCLOSURE CATEGORIES

Designated employees shall disclose their financial interests pursuant to the appropriate disclosure category as indicated in Appendix A.

- Category 1: (a) All investment and interest in, and all sources of
Schedules A thru H income from real property including but not limited to ownership, sale, management, transfer or exchange.
- (b) All investments in and sources of income from entities which own, sell, manage, transfer or exchange real property.
- (c) Any management position including but not limited to director, officer, partner or trustee in any business entity subject to or potentially affected by the regulatory authority of the Rent Board.
- (d) The assuming office statement shall disclose all interests and dealings in real property, including but not limited to ownership, sale, management, transfer or exchange, and interests in entities whose primary purpose is the ownership, sale, management, transfer or exchange of real property during the previous three years.

- Category 2: (a) All investments and interests in and all sources of
Schedules A thru income from real property, including but not limited
F and H to ownership, sale, management, transfer or exchange, subject to or potentially affected by the regulatory authority of the Rent Board.

- (b) All investments in and sources of income from entities which own, sell, manage, transfer or exchange real property, subject to or potentially affected by the regulatory authority of the Rent Board.

- Category 3: Investments in business entities and sources of income of
Schedules A, C the type which, within the past two years, have contracted
thru F and H with the City of Berkeley to provide services, supplies, materials, machinery or equipment to the Board.

(over)

-4-

Agenda
Number

Increased fees for:

- a) electrical work
- b) Sign Ordinance
- c) moving building

Requested an additional report from staff and Budget Committee on questions regarding permit fees at the time of budget approval.

Also requested report as to whether owner fees could be different from contractor fees.

26. Adopted a Conflict of Interest Code for the Rent Board, including Appendix A & B; referred Appendix C back to Board to await further statements on items raised; report due September 1st.

25

27. Held workshop on 81-82 budget, primarily surrounding community agency funding.

Rescheduled workshop with Budget Committee to July 14 at 8:30 p.m.

City Manager to inform Budget Committee, Council Revenue Committee is looking into a ballot measure, including a possible revenue measure to cover City services.

28. Heard presentation regarding South Berkeley crime problems and directed the City Manager to set up a task force in the morning, members to include the Police Chief, a representative from Planning, others if he feels necessary, and a representative from the community groups. The task force would bring a report to the Council at its special meeting of July 23.

City Manager was directed to re-issue the first South Berkeley Task Force report to all Councilmembers and provide a status report on all of the recommendations approved by the Council last year. The report would include the status of the continuing citizens group the Council asked to be formed.

Some of the local judges should be contacted to see if they could be present at the meeting of the 23rd.

29. In connection with amendments to the West Berkeley Redevelopment Plan:

26

- a) Referred to the Planning Commission proposed amendments with the request that it return with a report or waive a report prior to the public hearing;
- b) Set September 8th as the date for a joint public hearing with the Redevelopment Agency to consider the proposed amendment, and authorized publication of the required notice;

APPENDIX C: SUPPLEMENTAL PROVISIONS

Pursuant to state and federal constitutional and common law standards, state statutes, local authority, and the specific needs and circumstances of the Berkeley Rent Stabilization Board, the following supplemental provisions are incorporated into the Board's Conflict of Interest Code:

SECTION 1. DISQUALIFICATION FROM CERTAIN PARTICIPATION

(A) Status of Landlord or Tenant. Commissioners shall not necessarily be disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as a landlord or tenant.

(B) General Financial Disqualifications. No Board member or employee shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

(C) Financial Interest. A member or employee has a financial interest in a decision within the meaning of this Section if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(1) Any business entity in which the member or employee has a direct or indirect investment worth more than one thousand dollars (\$1000);

(2) Any real property in which the member or employee has a direct or indirect interest worth more than one thousand dollars (\$1000);

(3) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the member or employee within 12 months prior to the time when the decision is made;

(4) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse, dependent child, an agent on behalf of, or any business entity controlled by, a member or employee, or a trust in which he/she has a substantial interest. A business entity is controlled by a person if that person, his/her agents, spouse and dependent children hold more than 50 percent of the ownership interest in the entity. A person has a substantial interest in a trust when that person, his/her spouse and dependent children have a present or future interest worth more than one thousand dollars (\$1000).

A member or employee has a financial interest in the individual adjustment of a rent ceiling, where the member or employee is either the landlord of the property or a tenant residing in the property that is involved in the petition for such an adjustment, or is related by blood or marriage or adoption to an affected landlord or tenant.

APPENDIX C - cont'd.

(D) Bias or Personal Interest. No member or employee of the Board shall participate in any official capacity whatsoever, or use her or his official position to influence the making of any governmental decision, in any Board action in which that person has a bias or personal interest for or against any party to such proceeding. Bias or personal interest does not refer to that member's or employee's status as landlord or tenant or her or his political or philosophical beliefs.

(E) Material Financial Effect. In determining whether it is reasonably foreseeable that the effects of a governmental decision on the financial interests of a member or employee will be significant within the meaning of the general standard set forth in FPPC regulation 18702(a), consideration should be given to the following factor, in addition to those listed in FPPC regulation 18702(b):

Whether, in the case of a source of income, as defined by Government Code Section 87103(c) and Section 2(C)(3) of this Appendix, of two hundred fifty dollars (\$250) or more received by or promised to a public official within 12 months prior to the time the decision is made, the effect of the decision will be to directly increase or decrease the amount of income, including rents, to be received by the official by one hundred dollars (\$100) or more.

(F) Tenants and the Public Generally. Decisions are not deemed to have a material financial effect, distinguishable from their effect on the public generally, on members or employees simply because they are tenants in Berkeley, unless those decisions affect the specific property in which the tenant resides, as distinct from other properties in the City.

(G) Representation of Parties. No member or employee of the Board shall represent any landlord or tenant except him or herself in any proceeding before the Board while a member or employee of the Board and for six months thereafter.

SECTION 2. MANNER OF DISQUALIFICATION

(A) Obligation to Disqualify. Board members and employees must disqualify themselves from making or participating in the making of any decisions which foreseeably will have a material financial effect on any financial interest, as defined by Government Code Section 87103, FPPC Regulations, and this Code, or which are otherwise prohibited by this Code.

(B) Request for Disqualification. Any person may file a written request for disqualification with the Board Chairperson (for Board members) or the Director (for staff). Such requests shall be made as soon as possible. They shall state the reasons for the request and the specific disqualification(s) being requested. They shall be granted or denied, in whole or part, in writing, with reasons, within seven days of receipt, unless an earlier response is necessary to prevent any possible conflicts or is required by Board regulation.

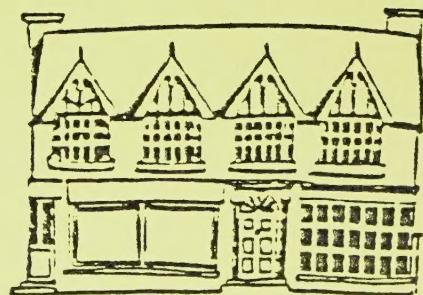
(C) Manner of Disqualification. An employee required to disqualify himself or herself shall notify the Director in writing, who shall record the employee's disqualification. Upon receipt of such statement, the Director shall immediately reassign the matter to another employee.

In the case of a member of the Rent Board, notice shall be given at the meeting during which consideration of the decision takes place and shall be made part of the official record. The member shall then refrain from participating, and shall in no way attempt to use his or her official position to influence any other person, with respect to the matter.

(D) Sanctions for Violating Employees. Any employee (except for Board members) who violates a provision of this Code is subject to discipline by the Director, including dismissal, consistent with applicable civil service or other personnel laws, regulations and procedures.

(E) Sanctions for Violating Board Members. Any Board member who violates a provision of this Code is subject to discipline (including suspension or dismissal) by the Board chairperson, subject to review and possible rescission by a majority of the Board, consistent with all applicable legal and constitutional protections, including the right to notice and hearing before being dismissed, or suspended for longer than two weeks. The discipline shall begin with a determination by the chairperson that the Board member concerned has a specified disqualification, and that he or she will not be allowed to participate in specified decisions and discussion. The suspension or removal of any Board member, pursuant to this Code, shall be subject to review and possible rescission by the City Council within 30 days of transmittal of the action to the Council. Such transmittal shall take place within two business days of the Board action.

The first part of the report deals with the general situation of the country. It is a very interesting and detailed account of the country's history and its present state. The author has done a great deal of research and has gathered a wealth of material. The second part of the report is a description of the country's geography and its natural resources. It is a very thorough and accurate description of the country's physical features and its natural wealth. The third part of the report is a description of the country's population and its social conditions. It is a very detailed and accurate description of the country's people and their way of life. The fourth part of the report is a description of the country's government and its political system. It is a very thorough and accurate description of the country's political structure and its functioning. The fifth part of the report is a description of the country's economy and its financial resources. It is a very detailed and accurate description of the country's economic structure and its financial resources. The sixth part of the report is a description of the country's culture and its artistic achievements. It is a very thorough and accurate description of the country's cultural heritage and its artistic accomplishments. The seventh part of the report is a description of the country's education and its intellectual life. It is a very detailed and accurate description of the country's educational system and its intellectual achievements. The eighth part of the report is a description of the country's health and its medical progress. It is a very thorough and accurate description of the country's health care system and its medical progress. The ninth part of the report is a description of the country's transportation and its communication system. It is a very detailed and accurate description of the country's transportation network and its communication system. The tenth part of the report is a description of the country's defense and its military strength. It is a very thorough and accurate description of the country's military forces and its defense capabilities. The eleventh part of the report is a description of the country's foreign relations and its international position. It is a very detailed and accurate description of the country's foreign policy and its international relations. The twelfth part of the report is a description of the country's future and its prospects. It is a very thorough and accurate description of the country's future and its prospects. The report is a very comprehensive and detailed account of the country's history, geography, population, government, economy, culture, education, health, transportation, defense, foreign relations, and future. It is a very valuable and interesting read for anyone who is interested in the country and its people.



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